



Isle of Man

Ellan Vannin

AT 4 of 2019

CRIMINAL EVIDENCE ACT 2019



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**Isle of Man***Ellan Vannin*

CRIMINAL EVIDENCE ACT 2019

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AN ACT to make fresh provision about evidence in criminal proceedings; and for connected purposes.

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

PART 1 – INTRODUCTORY

1 Short title

The short title of this Act is the Criminal Evidence Act 2019.

2 Commencement

- (1) This Act comes into operation on such day or days as the Department of Home Affairs (“**the Department**”) may by order appoint.
- (2) An order under subsection (1) may make such consequential, incidental and transitional provision as the Department considers necessary.

3 Interpretation

In this Act—

“**criminal proceedings**” means criminal proceedings in relation to which the strict rules of evidence apply;

“**defendant**”, in relation to criminal proceedings, means a person charged with an offence in those proceedings; and “**co-defendant**”, in relation to a defendant, means a person charged with an offence in the same proceedings; and

“**the Department**” is to be construed in accordance with section 2(1).

PART 2 — EVIDENCE

DIVISION 1 — EVIDENCE OF BAD CHARACTER

4 Meaning of “bad character”

P2003/44/98

References in this Division to evidence of a person's “**bad character**” are to evidence of, or of a disposition towards, misconduct on that person's part, other than evidence which—

- (a) has to do with the alleged facts of the offence with which the defendant is charged, or
- (b) is evidence of misconduct in connection with the investigation or prosecution of that offence.

5 Abolition of common law rules on admissibility

P2003/44/99

- (1) The common law rules governing the admissibility of evidence of bad character in criminal proceedings are abolished.
- (2) Subsection (1) is subject to section 21(1) in so far as it preserves the rule under which in criminal proceedings a person's reputation is admissible for the purpose of proving the person's bad character.

6 Non-defendant's bad character

P2003/44/100

- (1) In criminal proceedings evidence of the bad character of a person other than the defendant is admissible if and only if—
 - (a) it is important explanatory evidence,
 - (b) it has substantial probative value in relation to a matter which—
 - (i) is a matter in issue in the proceedings, and
 - (ii) is of substantial importance in the context of the case as a whole, or
 - (c) all parties to the proceedings agree to the evidence being admissible.
- (2) For the purposes of subsection (1)(a) evidence is important explanatory evidence if—
 - (a) without it, the court or jury would find it impossible or difficult properly to understand other evidence in the case, and
 - (b) its value for understanding the case as a whole is substantial.
- (3) In assessing the probative value of evidence for the purposes of subsection (1)(b) the court must have regard to the following factors (and to any others it considers relevant)—

- (a) the nature and number of the events, or other things, to which the evidence relates;
 - (b) when those events or things are alleged to have happened or existed;
 - (c) where—
 - (i) the evidence is evidence of a person's misconduct, and
 - (ii) it is suggested that the evidence has probative value by reason of similarity between that misconduct and other alleged misconduct,the nature and extent of the similarities and the dissimilarities between each of the alleged instances of misconduct;
 - (d) where—
 - (i) the evidence is evidence of a person's misconduct,
 - (ii) it is suggested that that person is also responsible for the misconduct charged, and
 - (iii) the identity of the person responsible for the misconduct charged is disputed,the extent to which the evidence shows or tends to show that the same person was responsible each time.
- (4) Except where subsection (1)(c) applies, evidence of the bad character of a person other than the defendant must not be given without leave of the court.

7 Defendant's bad character

P2003/44/101

- (1) In criminal proceedings evidence of the defendant's bad character is admissible if, but only if—
- (a) all parties to the proceedings agree to the evidence being admissible,
 - (b) the evidence is adduced by the defendant himself or herself or is given in answer to a question asked by him or her in cross-examination and intended to elicit it,
 - (c) it is important explanatory evidence,
 - (d) it is relevant to an important matter in issue between the defendant and the prosecution,
 - (e) it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant,
 - (f) it is evidence to correct a false impression given by the defendant, or
 - (g) the defendant has made an attack on another person's character.

- (2) Sections 8 to 12 contain provision supplementing subsection (1).
- (3) The court must not admit evidence under subsection (1)(d) or (g) if, on an application by the defendant to exclude it, it appears to the court that the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.
- (4) On an application to exclude evidence under subsection (3) the court must have regard, in particular, to the length of time between the matters to which that evidence relates and the matters which form the subject of the offence charged.

8 “Important explanatory evidence”

P2003/44/102

For the purposes of section 7(1)(c) evidence is “important explanatory evidence” if—

- (a) without it, the court or jury would find it impossible or difficult properly to understand other evidence in the case, and
- (b) its value for understanding the case as a whole is substantial.

9 “Matter in issue between the defendant and the prosecution”

P2003/44/103

- (1) For the purposes of section 7(1)(d) the “matters in issue between the defendant and the prosecution” include—
 - (a) the question whether the defendant has a propensity to commit offences of the kind with which he or she is charged, except where his or her having such a propensity makes it no more likely that he or she is guilty of the offence;
 - (b) the question whether the defendant has a propensity to be untruthful, except where it is not suggested that the defendant's case is untruthful in any respect.
- (2) Where subsection (1)(a) applies, a defendant's propensity to commit offences of the kind with which he or she is charged may (without limiting any other way of doing so) be established by evidence that he or she has been convicted of—
 - (a) an offence of the same description as the one with which he or she is charged, or
 - (b) an offence of the same category as the one with which he or she is charged.
- (3) Subsection (2) does not apply in the case of a particular defendant if the court is satisfied, by reason of the length of time since the conviction or for any other reason, that it would be unjust for it to apply in his or her case.

- (4) For the purposes of subsection (2)—
- (a) two offences are of the same description as each other if the statement of the offence in a complaint or information would, in each case, be in the same terms;
 - (b) two offences are of the same category as each other if they belong to the same category of offences prescribed for the purposes of this section by an order made by the Department.
- (5) A category prescribed by an order under subsection (4)(b) must consist of offences of the same type.
- (6) Only prosecution evidence is admissible under section 7(1)(d).
- (7) Where—
- (a) a defendant has been convicted of an offence under the law of any country or territory outside the Island (“the previous offence”), and
 - (b) the previous offence would constitute an offence under the law of the Island (“the corresponding offence”) if it were done in the Island at the time of the trial for the offence with which the defendant is now charged (“the current offence”),
- subsection (8) applies for the purpose of determining if the previous offence and the current offence are of the same description or category.
- (8) For the purposes of subsection (2)—
- (a) the previous offence is of the same description as the current offence if the corresponding offence is of that same description, as set out in subsection (4)(a);
 - (b) the previous offence is of the same category as the current offence if the current offence and the corresponding offence belong to the same category of offences prescribed as mentioned in subsection (4)(b).
- (9) For the purposes of subsection (10) “foreign service offence” means an offence which—
- (a) was the subject of proceedings under the service law of a country outside the British Islands, and
 - (b) would constitute an offence under the law of the Island or a service offence (“the corresponding domestic offence”) if it were done in the Island by a member of Her Majesty’s forces at the time of the trial for the offence with which the defendant is now charged (“the current offence”).
- (10) Where a defendant has been found guilty of a foreign service offence (“the previous service offence”), for the purposes of subsection (2)—

- (a) the previous service offence is an offence of the same description as the current offence if the corresponding domestic offence is of that same description, as set out in subsection (4)(a);
- (b) the previous service offence is an offence of the same category as the current offence if the current offence and the corresponding domestic offence belong to the same category of offences prescribed as mentioned in subsection (4)(b).

(11) In this section—

“Her Majesty’s forces” has the same meaning as in the Armed Forces Act 2006 (of Parliament);

“service law”, in relation to a country outside the British Islands, means the law governing all or any of the naval, military or air forces of that country.

Tynwald procedure for an order under subsection (4)(b) — approval required.

10 **“Matter in issue between the defendant and a co-defendant”**

P2003/44/104

- (1) Evidence which is relevant to the question whether the defendant has a propensity to be untruthful is admissible on that basis under section 7(1)(e) only if the nature or conduct of his or her defence is such as to undermine the co-defendant's defence.
- (2) Only evidence—
 - (a) which is to be (or has been) adduced by the co-defendant, or
 - (b) which a witness is to be invited to give (or has given) in cross-examination by the co-defendant,is admissible under section 7(1)(e).

11 **“Evidence to correct a false impression”**

P2003/44/105

- (1) For the purposes of section 7(1)(f)—
 - (a) the defendant gives a false impression if he or she is responsible for the making of an express or implied assertion which is apt to give the court or jury a false or misleading impression about the defendant;
 - (b) evidence to correct such an impression is evidence which has probative value in correcting it.
- (2) A defendant is treated as being responsible for the making of an assertion if—
 - (a) the assertion is made by the defendant in the proceedings (whether or not in evidence given by the defendant),
 - (b) the assertion was made by the defendant—

- (i) on being questioned under caution, before charge, about the offence with which he is charged, or
 - (ii) on being charged with the offence or officially informed that he or she might be prosecuted for it,
- and evidence of the assertion is given in the proceedings,
- (c) the assertion is made by a witness called by the defendant,
 - (d) the assertion is made by any witness in cross-examination in response to a question asked by the defendant that is intended to elicit it, or is likely to do so, or
 - (e) the assertion was made by any person out of court, and the defendant adduces evidence of it in the proceedings.
- (3) A defendant who would otherwise be treated as responsible for the making of an assertion is not to be so treated if, or to the extent that, he or she withdraws it or disassociates himself or herself from it.
- (4) Where it appears to the court that a defendant, by means of his or her conduct (other than the giving of evidence) in the proceedings, is seeking to give the court or jury an impression about himself or herself that is false or misleading, the court may if it appears just to do so treat the defendant as being responsible for the making of an assertion which is apt to give that impression.
- (5) In subsection (4) “conduct” includes appearance or dress.
- (6) Evidence is admissible under section 7(1)(f) only if it goes no further than is necessary to correct the false impression.
- (7) Only prosecution evidence is admissible under section 7(1)(f).

12 “Attack on another person's character”

P2003/44/106

- (1) For the purposes of section 7(1)(g) a defendant makes “an attack on another person's character” if—
- (a) the defendant adduces evidence attacking the other person's character,
 - (b) the defendant asks questions in cross-examination that are intended to elicit such evidence, or are likely to do so, or
 - (c) evidence is given of an imputation about the other person made by the defendant—
 - (i) on being questioned under caution, before charge, about the offence with which he or she is charged, or
 - (ii) on being charged with the offence or officially informed that he or she might be prosecuted for it.
- (2) In subsection (1) “evidence attacking the other person's character” means evidence to the effect that the other person—

- (a) has committed an offence (whether a different offence from the one with which the defendant is charged or the same one), or
 - (b) has behaved, or is disposed to behave, in a reprehensible way;
- and “imputation about the other person” means an assertion to that effect.
- (3) Only prosecution evidence is admissible under section 7(1)(g).

13 Stopping the case where evidence contaminated

P2003/44/107

- (1) If on a defendant's trial before a Deemster and a jury for an offence—
 - (a) evidence of the defendant's bad character has been admitted under any of paragraphs (c) to (g) of section 7(1), and
 - (b) the Deemster is satisfied at any time after the close of the case for the prosecution that—
 - (i) the evidence is contaminated, and
 - (ii) the contamination is such that, considering the importance of the evidence to the case against the defendant, the defendant's conviction of the offence would be unsafe,

the Deemster must either direct the jury to acquit the defendant of the offence or, if he or she 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)(b) in respect of it.

- (3) If—
 - (a) a jury is required to determine under section 9(6) of the *Criminal Jurisdiction Act 1993* whether a person charged on information with an offence did the act or made the omission charged,
 - (b) evidence of the person's bad character has been admitted under any of paragraphs (c) to (g) of section 7(1), and
 - (c) the Deemster is satisfied at any time after the close of the case for the prosecution that—
 - (i) the evidence is contaminated, and
 - (ii) the contamination is such that, considering the importance of the evidence to the case against the person, a finding

that he or she did the act or made the omission would be unsafe,

the Deemster must either direct the jury to acquit the defendant of the offence or, if he or she considers that there ought to be a rehearing, discharge the jury.

- (4) This section does not limit any other power a Deemster may have to direct a jury to acquit a person of an offence or to discharge a jury.
- (5) For the purposes of this section a person's evidence is contaminated where—
- (a) as a result of an agreement or understanding between the person and one or more others, or
 - (b) as a result of the person being aware of anything alleged by one or more others whose evidence may be, or has been, given in the proceedings,

the evidence is false or misleading in any respect, or is different from what it would otherwise have been.

14 Assumption of truth in assessment of relevance or probative value

P2003/44/109

- (1) A reference in this Division to the relevance or probative value of evidence is a reference to its relevance or probative value on the assumption that it is true, subject to subsection (2).
- (2) In assessing the relevance or probative value of an item of evidence for any purpose of this Division, a court need not assume that the evidence is true if it appears, on the basis of any material before the court (including any evidence which the court decides to hear on the matter), that no court or jury could reasonably find it to be true.

15 Court's duty to give reasons for rulings

P2003/44/110

- (1) Where the court makes a relevant ruling—
- (a) it must state in open court (but in the absence of the jury, if there is one) its reasons for the ruling;
 - (b) if it is a court of summary jurisdiction, it must cause the ruling and the reasons for it to be entered in the order book.
- (2) In this section “relevant ruling” means—
- (a) a ruling on whether an item of evidence is evidence of a person's bad character;
 - (b) a ruling on whether an item of such evidence is admissible under section 6 or 7 (including a ruling on an application under section 7(3));

- (c) a direction under section 13.

16 Interpretation of this Division

P2003/44/112

- (1) In this Division—

“**bad character**” is to be read in accordance with section 4;

“**important matter**” means a matter of substantial importance in the context of the case as a whole;

“**misconduct**” means the commission of an offence or other reprehensible behaviour;

“**offence**” includes a service offence;

“**probative value**”, and “**relevant**” (in relation to an item of evidence), are to be read in accordance with section 14;

“**prosecution evidence**” means evidence which is to be (or has been) adduced by the prosecution, or which a witness is to be invited to give (or has given) in cross-examination by the prosecution;

“**service offence**” has the same meaning as in the Armed Forces Act 2006 (of Parliament);

- (2) Where a defendant is charged with 2 or more offences in the same criminal proceedings, this Division (except section 7(3)) has effect as if each offence were charged in separate proceedings; and references to the offence with which the defendant is charged are to be read accordingly.

- (3) Nothing in this Division affects the exclusion of evidence—

- (a) under the rule in section 14 of the *Evidence Act 1871* against a party impeaching the credit of his or her own witness by general evidence of bad character; or
- (b) on grounds other than the fact that it is evidence of a person's bad character.

¹ 2006 c. 52. The Act (other than paragraph 5(ba) of Schedule 9) extends to the Island by virtue of section 384(2)(a) and (3) subject to such modifications as Her Majesty may by Order in Council specify.

DIVISION 2 — HEARSAY EVIDENCE

*Subdivision 1 — Main provisions***17 Admissibility of hearsay evidence**

P2003/44/114

- (1) In criminal proceedings a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated if, but only if—
 - (a) any provision of this Division or any other statutory provision makes it admissible,
 - (b) any rule of law preserved by section 21 makes it admissible,
 - (c) all parties to the proceedings agree to it being admissible, or
 - (d) the court is satisfied that it is in the interests of justice for it to be admissible.
- (2) In deciding whether a statement not made in oral evidence should be admitted under subsection (1)(d), the court must have regard to the following factors (and to any others it considers relevant)—
 - (a) how much probative value the statement has (assuming it to be true) in relation to a matter in issue in the proceedings, or how valuable it is for the understanding of other evidence in the case;
 - (b) what other evidence has been, or can be, given on the matter or evidence mentioned in paragraph (a);
 - (c) how important the matter or evidence mentioned in paragraph (a) is in the context of the case as a whole;
 - (d) the circumstances in which the statement was made;
 - (e) how reliable the maker of the statement appears to be;
 - (f) how reliable the evidence of the making of the statement appears to be;
 - (g) whether oral evidence of the matter stated can be given and, if not, why it cannot;
 - (h) the amount of difficulty involved in challenging the statement;
 - (i) the extent to which that difficulty would be likely to prejudice the party facing it.
- (3) Nothing in this Division affects the exclusion of evidence of a statement on grounds other than the fact that it is a statement not made in oral evidence in the proceedings.

18 Statements and matters stated

P2003/44/115

- (1) In this Division references to a statement or to a matter stated are to be read as follows.
- (2) A “**statement**” is any representation of fact or opinion made by a person by whatever means; and it includes a representation made in a sketch, photofit or other pictorial form.
- (3) A “**matter stated**” is one to which this Division applies if (and only if) the purpose, or one of the purposes, of the person making the statement appears to the court to have been—
 - (a) to cause another person to believe the matter, or
 - (b) to cause another person to act or a machine to operate on the basis that the matter is as stated.

*Subdivision 2 — Principal categories of admissibility***19 Cases where a witness is unavailable**

P2003/44/116

- (1) In criminal proceedings a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated if—
 - (a) oral evidence given in the proceedings by the person who made the statement would be admissible as evidence of that matter,
 - (b) the person who made the statement (“the relevant person”) is identified to the court's satisfaction, and
 - (c) any of the 5 conditions mentioned in subsection (2) is satisfied.
- (2) The conditions are—
 - (a) that the relevant person is dead;
 - (b) that the relevant person is unfit to be a witness because of his or her bodily or mental condition;
 - (c) that the relevant person is outside the Island and it is not reasonably practicable to secure that person's attendance;
 - (d) that the relevant person cannot be found although such steps as it is reasonably practicable to take to find that person have been taken;
 - (e) that through fear the relevant person does not give (or does not continue to give) oral evidence in the proceedings, either at all or in connection with the subject matter of the statement, and the court gives leave for the statement to be given in evidence.
- (3) For the purposes of subsection (2)(e) “fear” is to be widely construed and (for example) includes fear of the death or injury of another person or of financial loss.

- (4) Leave may be given under subsection (2)(e) only if the court considers that the statement ought to be admitted in the interests of justice, having regard—
- (a) to the statement's contents,
 - (b) to any risk that its admission or exclusion will result in unfairness to any party to the proceedings (and in particular to how difficult it will be to challenge the statement if the relevant person does not give oral evidence),
 - (c) in appropriate cases, to the fact that a direction under section 30 of the Criminal Justice, Police and Courts Act 2007 could be made in respect of the witness; and
 - (d) to any other relevant circumstances.
- (5) A condition set out in any paragraph of subsection (2) which is in fact satisfied is to be treated as not satisfied if it is shown that the circumstances described in that paragraph are caused—
- (a) by the person in support of whose case it is sought to give the statement in evidence, or
 - (b) by a person acting on behalf of the person mentioned in paragraph (a),
- in order to prevent the relevant person giving oral evidence in the proceedings (whether at all or in connection with the subject matter of the statement).

20 Business and other documents

P2003/44/117

- (1) In criminal proceedings a statement contained in a document is admissible as evidence of any matter stated if—
- (a) oral evidence given in the proceedings would be admissible as evidence of that matter,
 - (b) the requirements of subsection (2) are satisfied, and
 - (c) the requirements of subsection (5) are satisfied, in a case where subsection (4) requires them to be.
- (2) The requirements of this subsection are satisfied if—
- (a) the document or the part containing the statement was created or received by a person in the course of a trade, business, profession or other occupation, or as the holder of a paid or unpaid office,
 - (b) the person who supplied the information contained in the statement (“the relevant person”) had or may reasonably be supposed to have had personal knowledge of the matters dealt with, and

- (c) each person (if any) through whom the information was supplied from the relevant person to the person mentioned in paragraph (a) received the information in the course of a trade, business, profession or other occupation, or as the holder of a paid or unpaid office.
- (3) The persons mentioned in paragraphs (a) and (b) of subsection (2) may be the same person.
- (4) The additional requirements of subsection (5) must be satisfied if the statement—
 - (a) was prepared for the purposes of pending or contemplated criminal proceedings, or for a criminal investigation, but
 - (b) was not obtained pursuant to a request under section 20 of the *Criminal Justice Act 1991*.
- (5) The requirements of this subsection are satisfied if —
 - (a) any of the 5 conditions mentioned in section 19(2) is satisfied (absence of relevant person etc), or
 - (b) the relevant person cannot reasonably be expected to have any recollection of the matters dealt with in the statement (having regard to the length of time since he or she supplied the information and all other circumstances).
- (6) A statement is not admissible under this section if the court makes a direction to that effect under subsection (7).
- (7) The court may make a direction under this subsection if satisfied that the statement's reliability as evidence for the purpose for which it is tendered is doubtful in view of—
 - (a) its contents,
 - (b) the source of the information contained in it,
 - (c) the way in which or the circumstances in which the information was supplied or received, or
 - (d) the way in which or the circumstances in which the document concerned was created or received.

21 Preservation of certain common law categories of admissibility

P2003/44/118

- (1) The following rules of law are preserved.

1 Public information etc

Any rule of law under which in criminal proceedings—

- (a) published works dealing with matters of a public nature (such as histories, scientific works, dictionaries and maps) are admissible as evidence of facts of a public nature stated in them,

- (b) public documents (such as public registers, and returns made under public authority with respect to matters of public interest) are admissible as evidence of facts stated in them,
- (c) records (such as the records of certain courts, treaties, Crown grants, pardons and commissions) are admissible as evidence of facts stated in them, or
- (d) evidence relating to a person's age or date or place of birth may be given by a person without personal knowledge of the matter.

2 Reputation as to character

Any rule of law under which in criminal proceedings evidence of a person's reputation is admissible for the purpose of proving his or her good or bad character.

Note: The rule is preserved only so far as it allows the court to treat such evidence as proving the matter concerned.

3 Reputation or family tradition

Any rule of law under which in criminal proceedings evidence of reputation or family tradition is admissible for the purpose of proving or disproving—

- (a) pedigree or the existence of a marriage,
- (b) the existence of any public or general right, or
- (c) the identity of any person or thing.

Note: The rule is preserved only so far as it allows the court to treat such evidence as proving or disproving the matter concerned.

4 Res gestae

Any rule of law under which in criminal proceedings a statement is admissible as evidence of any matter stated if—

- (a) the statement was made by a person so emotionally overpowered by an event that the possibility of concoction or distortion can be disregarded,
- (b) the statement accompanied an act which can be properly evaluated as evidence only if considered in conjunction with the statement, or
- (c) the statement relates to a physical sensation or a mental state (such as intention or emotion).

5 Confessions etc

Any rule of law relating to the admissibility of confessions or mixed statements in criminal proceedings.

6 Admissions by agents etc

Any rule of law under which in criminal proceedings—

- (a) an admission made by an agent of a defendant is admissible against the defendant as evidence of any matter stated, or

- (b) a statement made by a person to whom a defendant refers a person for information is admissible against the defendant as evidence of any matter stated.

7 Common enterprise

Any rule of law under which in criminal proceedings a statement made by a party to a common enterprise is admissible against another party to the enterprise as evidence of any matter stated.

8 Expert evidence

Any rule of law under which in criminal proceedings an expert witness may draw on the body of expertise relevant to the witness's field.

- (2) With the exception of the rules preserved by this section, the common law rules governing the admissibility of hearsay evidence in criminal proceedings are abolished.

22 Inconsistent statements

P2003/44/119

- (1) If in criminal proceedings a person gives oral evidence and—
 - (a) the person admits making a previous inconsistent statement, or
 - (b) a previous inconsistent statement made by the person is proved by virtue of section 10, 11 or 12 of the *Evidence Act 1871*,the statement is admissible as evidence of any matter stated of which oral evidence by the person would be admissible.
- (2) If in criminal proceedings evidence of an inconsistent statement by any person is given under section 27(2)(c), the statement is admissible as evidence of any matter stated in it of which oral evidence by that person would be admissible.

23 Other previous statements of witnesses

P2003/44/120

- (1) This section applies where a person (referred to below as “W”) is called to give evidence in criminal proceedings.
- (2) If a previous statement by W is admitted as evidence to rebut a suggestion that W's oral evidence has been fabricated, that statement is admissible as evidence of any matter stated of which oral evidence by W would be admissible.
- (3) A statement made by W in a document—
 - (a) which is used by W to refresh W's memory while giving evidence,
 - (b) on which W 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 W would be admissible.

- (4) A previous statement by W is admissible as evidence of any matter stated of which oral evidence by W would be admissible, if—
 - (a) any of the following 3 conditions is satisfied, and
 - (b) while giving evidence the witness indicates that to the best of W's belief W made the statement, and that to the best of W's belief it states the truth.
- (5) The first condition is that the statement identifies or describes a person, object or place.
- (6) The second condition is that the statement was made by W when the matters stated were fresh in W's memory but W does not remember them, and cannot reasonably be expected to remember them, well enough to give oral evidence of them in the proceedings.
- (7) The third condition is that—
 - (a) W claims to be a person against whom an offence has been committed,
 - (b) the offence is one to which the proceedings relate,
 - (c) the statement consists of a complaint made by W (whether to a person in authority or not) about conduct which would, if proved, constitute the offence or part of the offence,
 - (d) the complaint was not made as a result of a threat or a promise, and
 - (e) before the statement is adduced W gives oral evidence in connection with its subject matter.
- (8) For the purposes of subsection (7) the fact that the complaint was elicited (for example, by a leading question) is irrelevant unless a threat or a promise was involved.

Subdivision 3 — Supplementary provisions

24 Additional requirement for admissibility of multiple hearsay

P2003/44/121

- (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 20, 22 or 23,
 - (b) all parties to the proceedings so 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.

25 Documents produced as exhibits

P2003/44/122

- (1) This section applies if on a trial before a Deemster and a jury for an offence—
- (a) a statement made in a document is admitted in evidence under section 22 or 23 and
 - (b) the document or a copy of it is produced as an exhibit.
- (2) The exhibit must not accompany the jury when they retire to consider their verdict unless—
- (a) the Deemster considers it appropriate, or
 - (b) all the parties to the proceedings agree that it should accompany the jury.

26 Capability to make statement

P2003/44/123

- (1) Nothing in section 19, 22 or 23 makes a statement admissible as evidence if it was made by a person who did not have the required capability at the time when the person made the statement.
- (2) Nothing in section 20 makes a statement admissible as evidence if any person who, in order for the requirements of section 20(2) to be satisfied, must at any time have supplied or received the information concerned or created or received the document or part concerned—
- (a) did not have the required capability at that time, or
 - (b) cannot be identified but cannot reasonably be assumed to have had the required capability at that time.
- (3) For the purposes of this section a person has the required capability if the person is capable of—
- (a) understanding questions put to him or her about the matters stated, and
 - (b) giving answers to such questions which can be understood.
- (4) Where by reason of this section there is an issue as to whether a person had the required capability when he or she made a statement—
- (a) proceedings held for the determination of the issue must take place in the absence of the jury (if there is one);
 - (b) in determining the issue the court may receive expert evidence and evidence from any person to whom the statement in question was made;

- (c) the burden of proof on the issue lies on the party seeking to adduce the statement, and the standard of proof is the balance of probabilities.

27 Credibility

P2003/44/124

- (1) This section applies if in criminal proceedings—
 - (a) a statement not made in oral evidence in the proceedings is admitted as evidence of a matter stated, and
 - (b) the maker of the statement (who is referred to below in this section as “M”) does not give oral evidence in connection with the subject matter of the statement.
- (2) In such a case—
 - (a) any evidence which (if M had given such evidence) would have been admissible as relevant to M’s credibility as a witness is so admissible in the proceedings;
 - (b) evidence may with the court’s leave be given of any matter which (if M had given such evidence) could have been put to M in cross-examination as relevant to M’s credibility as a witness but of which evidence could not have been adduced by the cross-examining party;
 - (c) evidence tending to prove that M made (at whatever time) any other statement inconsistent with the statement admitted as evidence is admissible for the purpose of showing that M contradicted himself or herself.
- (3) If as a result of evidence admitted under this section an allegation is made against M, 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.
- (4) In the case of a statement in a document which is admitted as evidence under section 20 each person who, in order for the statement to be admissible, must have supplied or received the information concerned or created or received the document or part concerned is to be treated as M for the purposes of subsections (1) to (3).

28 Stopping the case where evidence is unconvincing

P20003/44/125

- (1) If on a defendant’s trial before a Deemster 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, his or her conviction of the offence 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 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 21 of the *Criminal Jurisdiction Act 1993* whether a person charged on information with an offence did the act or made the omission charged, and
- (b) the Deemster is satisfied as mentioned in subsection (1) above 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 he or she did the act or made the omission would be unsafe,

the Deemster 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 limit any other power a Deemster may have to direct a jury to acquit a person of an offence or to discharge a jury.

29 Court's general discretion to exclude evidence

P2003/44/126

- (1) In criminal proceedings the court may 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 Division limits or otherwise affects any power of a court to exclude evidence (whether by preventing questions from being put or otherwise) at its discretion.

Subdivision 4 – Miscellaneous

30 Expert evidence: preparatory work

P2003/44/127

- (1) This section applies if—
- (a) a statement has been prepared for the purposes of criminal proceedings,
 - (b) the person who prepared the statement had or may reasonably be supposed to have had personal knowledge of the matters stated,
 - (c) notice is given under rules of court made —
 - (i) in the case of the Court of General Gaol Delivery under section 25 of the *High Court Act 1991* as applied by section 57 of the *Criminal Jurisdiction Act 1993*, or
 - (ii) in the case of a court of summary jurisdiction under section 91 of the *Summary Jurisdiction Act 1989*,that another person (the expert) will in evidence given in the proceedings orally or under Part I of Schedule 4 to the *Criminal Law Act 1981* base an opinion or inference on the statement, and
 - (d) the notice gives the name of the person who prepared the statement and the nature of the matters stated.
- (2) In evidence given in the proceedings the expert may base an opinion or inference on the statement.
- (3) If evidence based on the statement is given under subsection (2) the statement is to be treated as evidence of what it states.
- (4) This section does not apply if the court, on an application by a party to the proceedings, orders that it is not in the interests of justice that it should apply.
- (5) The matters to be considered by the court in deciding whether to make an order under subsection (4) include—
- (a) the expense of calling as a witness the person who prepared the statement;
 - (b) whether relevant evidence could be given by that person which could not be given by the expert;
 - (c) whether that person can reasonably be expected to remember the matters stated well enough to give oral evidence of them.

- (6) Subsections (1) to (5) apply to a statement prepared for the purposes of a criminal investigation as they apply to a statement prepared for the purposes of criminal proceedings, and in such a case references to the proceedings are to criminal proceedings arising from the investigation.

31 Confessions

P2003/44/128

- (1) After section 11 of the *Criminal Justice Act 1991* insert—

11A Confessions may be given in evidence for co-accused

- (1) In any proceedings a confession made by an accused person may be given in evidence for another person charged in the same proceedings (a “co-accused”) in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section.
- (2) If, in any proceedings where a co-accused proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained—
- (a) by oppression of the person who made it; or
 - (b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by that person in consequence of whatever was said or done,
- the court shall not allow the confession to be given in evidence for the co-accused except in so far as it is proved to the court on the balance of probabilities that the confession (notwithstanding that it may be true) was not so obtained.
- (3) Before allowing a confession made by an accused person to be given in evidence for a co-accused in any proceedings, the court may of its own motion require the fact that the confession was not obtained as mentioned in subsection (2) to be proved in the proceedings on the balance of probabilities.
- (4) The fact that a confession is wholly or partly excluded in pursuance of this section shall not affect the admissibility in evidence—
- (a) of any facts discovered as a result of the confession; or
 - (b) where the confession is relevant as showing that the accused speaks, writes or expresses himself or herself in a particular way, of so much of the confession as is necessary to show that he or she does so.

- (5) Evidence that a fact to which this subsection applies was discovered as a result of a statement made by an accused shall not be admissible unless evidence of how it was discovered is given by the accused or on behalf of the accused.
 - (6) Subsection (5) applies—
 - (a) to any fact discovered as a result of a confession which is wholly excluded in pursuance of this section; and
 - (b) to any fact discovered as a result of a confession which is partly so excluded, if the fact is discovered as a result of the excluded part of the confession.
 - (7) In this section “oppression” includes torture, inhuman or degrading treatment, and the use or threat of violence (whether or not amounting to torture).²²
- (2) Subject to subsection (1), nothing in this Division makes a confession by a defendant admissible if it would not be admissible under section 11 of the *Criminal Justice Act 1991*.

32 Representations other than by a person

P2003/44/129

- (1) Where a representation of any fact—
 - (a) is made otherwise than by a person, but
 - (b) depends for its accuracy on information supplied (directly or indirectly) by a person,

the representation is not admissible in criminal proceedings as evidence of the fact unless it is proved that the information was accurate.
- (2) Subsection (1) does not affect the operation of the presumption that a mechanical device has been properly set or calibrated.

33 Evidence at retrial

P2003/44/131

In section 46 of the *Criminal Jurisdiction Act 1993* for subsections (7) and (8) substitute—

- ²³ (7) Evidence given at a retrial must be given orally if it was given orally at the original trial, unless—
 - (a) all the parties to the retrial agree otherwise;
 - (b) section 19 of the *Criminal Evidence Act 2018* applies (admissibility of hearsay evidence where a witness is unavailable); or
 - (c) the witness is unavailable to give evidence, otherwise than as mentioned in subsection (2) of that section, and section 17(1)(d) of that Act

(admission of hearsay evidence under residual discretion) applies. **22**.

Subdivision 5 — General provisions

34 Proof of statements in documents

P2003/44/133

Where a statement in a document is admissible as evidence in criminal proceedings, the statement may be proved by producing either —

- (a) the document, or
- (b) (whether or not the document exists) a copy of the document or of the material part of it,

authenticated in whatever way the court may approve.

35 Interpretation of Division 2

P2003/44/134

(1) In this Division—

“**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;

“**document**” means anything in which information of any description is recorded;

“**oral evidence**” includes evidence which, by reason of any disability, disorder or other impairment, a person called as a witness gives in writing or by signs or by way of any device;

“**statutory provision**” means any provision contained in, or in an instrument made under, this or any other Act, including any Act passed after this Act.

(2) Section 18 (statements and matters stated) contains other general interpretative provisions.

(3) Where a defendant is charged with 2 or more offences in the same criminal proceedings, this Division has effect as if each offence were charged in separate proceedings.

DIVISION 3 — MISCELLANEOUS AND SUPPLEMENTAL

36 Evidence by video recording

P2003/44/137(1) to (5) {adapted}

(1) This section applies where—

- (a) a person is called as a witness in proceedings for an offence triable on information,

- (b) the person claims to have witnessed (whether visually or in any other way)—
 - (i) events alleged by the prosecution to include conduct constituting the offence or part of the offence, or
 - (ii) events closely connected with such events,
 - (c) the person has previously given an account of the events in question (whether in response to questions asked or otherwise),
 - (d) the account was given at a time when those events were fresh in the person's memory (or would have been, assuming the truth of the claim mentioned in paragraph (b)),
 - (e) a video recording was made of the account,
 - (f) the court has made a direction that the recording should be admitted as evidence in chief of the witness, and the direction has not been rescinded, and
 - (g) the recording is played in the proceedings in accordance with the direction.
- (2) If, or to the extent that, the witness in his or her oral evidence in the proceedings asserts the truth of the statements made by the witness in the recorded account, they shall be treated as if made by the witness in that evidence.
- (3) A direction under subsection (1)(f)—
- (a) may not be made in relation to a recorded account given by the defendant;
 - (b) may be made only if it appears to the court that—
 - (i) the witness's recollection of the events in question is likely to have been significantly better when he or she gave the recorded account than it will be when he or she gives oral evidence in the proceedings, and
 - (ii) it is in the interests of justice for the recording to be admitted, having regard in particular to the matters mentioned in subsection (4).
- (4) Those matters are—
- (a) the interval between the time of the events in question and the time when the recorded account was made;
 - (b) any other factors that might affect the reliability of what the witness said in that account;
 - (c) the quality of the recording;
 - (d) any views of the witness as to whether his or her evidence in chief should be given orally or by means of the recording.

- (5) For the purposes of subsection (2) it does not matter if the statements in the recorded account were not made on oath.

37 Video evidence: further provisions

P2003/44/138 (2), (3) and (5)

- (1) The reference in subsection 1(f) of section 36 to the admission of a recording includes a reference to the admission of part of the recording; and references in that section and this one to the video recording or to the witness's recorded account shall, where appropriate, be read accordingly.
- (2) In considering whether any part of a recording should be not admitted under section 36, the court must consider—
- (a) whether admitting that part would carry a risk of prejudice to the defendant, and
 - (b) if so, whether the interests of justice nevertheless require it to be admitted in view of the desirability of showing the whole, or substantially the whole, of the recorded interview.
- (3) Nothing in section 36 affects the admissibility of any video recording which would be admissible apart from that section.

38 Use of documents to refresh memory

P2003/44/139

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

P may, at any stage in the course of giving evidence, refresh P’s memory of the matter from that transcript.

39 Interpretation of Division 3

P2003/44/140

In this Division —

“**document**” means anything in which information of any description is recorded, but not including any recording of sounds or moving images;

“**oral evidence**” includes evidence which, by reason of any disability, disorder or other impairment, a person called as a witness gives in writing or by signs or by way of any device;

“**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.

PART 3 — CLOSING PROVISIONS

40 Amendments and repeals

(1) For section 19(1) of the *Criminal Justice Act 1991* (meaning of “**confession**” for Chapter II of Part I) substitute—

“(1) In this Chapter “**confession**” includes any statement wholly or partly adverse to the person who made it, whether made to a person in authority or not and whether made in words or otherwise.”

(2) The following are repealed—

- (a) paragraphs (f) and (h) of the proviso to section 1 of the *Criminal Evidence Act 1946*;
- (b) the *Criminal Evidence Act 1967*;
- (c) sections 1 to 6 of the *Criminal Justice Act 1991*, and the definition of “**confession**” in section 10 of that Act.

ENDNOTES

Table of Endnote References

