

**FIRST SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

**No. 3,227 of 7th June, 2001**

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I ASSENT,  
DAVID DURIE,  
GOVERNOR.

6th June, 2001.



**GIBRALTAR**

**No. 13 of 2001**

**AN ORDINANCE** to amend the Criminal Procedure Ordinance.

**ENACTED** by the Legislature of Gibraltar.

**Title.**

1. This Ordinance, which amends the Criminal Procedure Ordinance (hereinafter referred to as "the principal Ordinance"), may be cited as the Criminal Procedure (Amendment) Ordinance, 2001.

**Substitution of section 94 of the principal Ordinance.**

2. For section 94 of the principal Ordinance (admissibility of certain trade or business records) there shall be substituted the following sections:

**“DOCUMENTARY EVIDENCE IN CRIMINAL PROCEEDINGS**

**First-hand hearsay.**

94.(1) Subject–

- (a) to subsection (4) below;
- (b) to evidence given orally at the original trial being given orally at the retrial; and
- (c) to section 94B below,

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 him would be admissible if–

- (i) the requirements of one of the paragraphs of subsection (2) below are satisfied; or
- (ii) the requirements of subsection (3) below are satisfied.

(2) The requirements mentioned in subsection 1(i) above are–

- (a) that the person who made the statement is dead or by reason of his bodily or mental condition unfit to attend as a witness;
- (b) that–
  - (i) the person who made the statement is outside Gibraltar; and
  - (ii) it is not reasonably practicable to secure his attendance; or

(c) that all reasonable steps have been taken to find the person who made the statement, but that he cannot be found.

(3) The requirements mentioned in subsection (1)(ii) above are–

(a) that the statement was made to a police officer or some other person charged with the duty of investigating offences or charging offenders; and

(b) that the person who made it does not give oral evidence through fear or because he is kept out of the way.

(4) Subsection (1) above does not render admissible a confession made by an accused person that would not be admissible under the current laws of evidence of confessions.

(5) The requirements of subsection (2)(b)(ii) or 3(b) of this section shall be deemed not to have been satisfied if the failure to secure the attendance of the person who made the statement or the failure of that person to give oral evidence as the case may be is principally due to the fact that the person making the statement is directly or indirectly subject to superior instructions to the effect that he should not attend before the Court in Gibraltar or give oral evidence before it by virtue of that superior authority's non recognition of Her Majesty's courts in Gibraltar or any other political reason.

(6) A certificate in writing signed by the Chief Secretary as to any fact referred to in (5) above shall be conclusive as to the facts therein certified.

**Business etc. documents.**

94A.(1) Subject–

(a) to subsections (3) and (4) below;

- (b) to evidence given orally at the original trial being given orally at the retrial; and
- (c) to section 94B below,

a statement in a document shall be admissible in criminal proceedings as evidence of any fact of which direct oral evidence would be admissible, if the following conditions are satisfied –

- (i) the document 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; and
- (ii) the information contained in the document was supplied by a person (whether or not the maker of the statement) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with.

(2) Subsection (1) above applies whether the information contained in the document was supplied directly or indirectly but, if it was supplied indirectly, only if each person through whom it was supplied received it–

- (a) in the course of a trade, business, profession or other occupation; or
- (b) as the holder of a paid or unpaid office.

(3) Subsection (1) above does not render admissible a confession made by an accused person that would not be admissible under the current laws of evidence of confessions.

(4) A statement prepared otherwise than in accordance with sections 94G, 94H or 94i below for the purposes–

- (a) of pending or contemplated criminal proceedings; or
- (b) of a criminal investigation,

shall not be admissible by virtue of subsection (1) above unless–

- (i) the requirements of one of the paragraphs of subsection (2) of section 94 above are satisfied; or
- (ii) the requirements of subsection (3) of that section are satisfied; or
- (iii) the person who made the statement cannot reasonably be expected (having regard to the time which has elapsed since he made the statement and to all the circumstances) to have any recollection of the matters dealt with in the statement.

**Evidence from computer records.**

94B.(1) In any criminal proceedings, a statement in a document produced by computer shall not be admissible as evidence of any fact stated therein unless it is shown–

- (a) that there are no reasonable grounds for believing that the statement is inaccurate because of improper use of the computer;
- (b) that at all material times the computer was operating properly, or if not, that any respect in which it was not operating properly or was out of operation was not such as to affect the production of the document or the accuracy of its contents; and
- (c) that any relevant conditions specified in rules of court under subsection (2) below are satisfied.

(2) Provision may be made by rules of court requiring that in any proceedings where it is desired to give a statement in evidence by virtue of this section such information concerning the statement as may be required by the rules shall be provided in such form and at such time as may be so required.

(3) Schedule 3A shall have effect for the purpose of supplementing this section.

**Principles to be followed by the Court.**

94C.(1) If, having regard to all the circumstances—

- (a) the Supreme Court—
  - (i) on a trial on indictment; or
  - (ii) on an appeal from the Magistrates' Court; or
- (b) the criminal jurisdiction of the Court of Appeal; or
- (c) the Magistrates' Court on a trial of an information,

is of the opinion that in the interests of justice a statement which is admissible by virtue of section 94 or 94A above nevertheless ought not to be admitted, it may direct that the statement shall not be admitted.

(2) Without prejudice to the generality of subsection (1) above, it shall be the duty of the court to have regard—

- (a) to the nature and source of the document containing the statement and to whether or not, having regard to its nature and source and to any other circumstances that appear to the court to be relevant, it is likely that the document is authentic;
- (b) to the extent to which the statement appears to supply evidence which would otherwise not be readily available;
- (c) to the relevance of the evidence that it appears to supply to any issue which is likely to have to be determined in the proceedings; and
- (d) to any risk, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence

in the proceedings, that its admission or exclusion will result in unfairness to the accused or, if there is more than one, to any of them.

**Statements in documents that appear to have been prepared for purposes of criminal proceedings or investigations.**

94D. Where a statement which is admissible in criminal proceedings by virtue of section 94 or 94A above appears to the court to have been prepared, otherwise than in accordance with section 94G, 94H or 94I below, for the purposes—

- (a) of pending or contemplated criminal proceedings; or
- (b) of a criminal investigation,

the statement shall not be given in evidence in any criminal proceedings without the leave of the court, and the court shall not give leave unless it is of the opinion that the statement ought to be admitted in the interests of justice; and in considering whether its admission would be in the interests of justice, it shall be the duty of the court to have regard—

- (i) to the contents of the statement;
- (ii) to any risk, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings, that its admission or exclusion will result in unfairness to the accused or, if there is more than one, to any of them; and
- (iii) to any other circumstances that appear to the court to be relevant.

**Proof of statements contained in documents.**

94E. Where a statement contained in a document is admissible as evidence in criminal 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; and it is immaterial for the purposes of this subsection how many removes there are between a copy and the original.

**Documentary evidence - supplementary.**

94F.(1) Nothing in sections 94, 94A or 94C to 94E shall prejudice—

- (a) the admissibility of a statement not made by a person while giving oral evidence in court which is admissible otherwise than by virtue of those sections; or
- (b) any power of a court to exclude at its discretion a statement admissible by virtue of those sections.

(2) Schedule 3B to this Ordinance shall have effect for the purpose of supplementing sections 94, 94A and 94C to 94F(1).

**OTHER PROVISIONS ABOUT EVIDENCE IN CRIMINAL PROCEEDINGS**

**Expert reports.**

94G.(1) An expert report shall be admissible as evidence in criminal proceedings, whether or not the person making it attends to give oral evidence in those proceedings.

(2) If it is proposed that the person making the report shall not give oral evidence, the report shall only be admissible with the leave of the court.

(3) For the purpose of determining whether to give leave the court shall have regard—



- (a) to the contents of the report;
- (b) to the reasons why it is proposed that the person making the report shall not give oral evidence;
- (c) to any risk, having regard in particular to whether it is likely to be possible to controvert statements in the report if the person making it does not attend to give oral evidence in the proceedings, that its admission or exclusion will result in unfairness to the accused or, if there is more than one, to any of them; and
- (d) to any other circumstances that appear to the court to be relevant.

(4) An expert report, when admitted, shall be evidence of any fact or opinion of which the person making it could have given oral evidence.

(5) In this section, “expert report” means a written report by a person dealing wholly or mainly with matters on which he is (or would if living be) qualified to give expert evidence.

**Form of evidence and glossaries.**

94H. For the purpose of helping members of juries to understand complicated issues of fact or technical terms rules of court may make provision—

- (a) as to the furnishing of evidence in any form, notwithstanding the existence of admissible material from which the evidence to be given in that form would be derived; and
- (b) as to the furnishing of glossaries for such purposes as may be specified,

in any case where the court gives leaves for, or requires, evidence or a glossary to be so furnished.

**Overseas evidence for use in Gibraltar.**

94i(1) Where on an application made in accordance with subsection (2) it appears to a Justice of the Peace or a judge—

- (a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed; and
- (b) that proceedings in respect of the offence have been instituted or that the offence is being investigated,

he may issue a letter (“a letter of request”) requesting assistance in obtaining outside Gibraltar such evidence as is specified in the letter for use in the proceedings or investigation.

(2) An application under subsection (1) may be made by the Attorney General or, if the proceedings have been issued, by the person charged in those proceedings.

(3) The Attorney General may issue a letter of request if—

- (a) he is satisfied as to the matters mentioned in subsection (1)(a); and

(b) the offence in question is being investigated or he has instituted proceedings in respect of it.

(4) Subject to subsection (5), a letter of request shall be sent by the Attorney General—

(a) to a court or tribunal specified in the letter and exercising jurisdiction in the place where the evidence is to be obtained; or

(b) to any authority recognised by the government of the country or territory in question as the appropriate authority for receiving requests for assistance of the kind to which this section applies.

(5) In cases of urgency a letter of request may be sent direct to such court or tribunal as is mentioned in subsection (4)(a) above.

(6) In this section “evidence” includes documents and other articles.

(7) Evidence obtained by virtue of letter of request shall not without the consent of such an authority as is mentioned in subsection (4)(b) be used for any purpose other than that specified in the letter; and when any document or other article obtained pursuant to a letter of request is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it shall be returned to such an authority unless that authority indicates that the document or article need not be returned.

(8) In exercising the discretion conferred by section 94C in relation to a statement contained in evidence taken pursuant to a letter of request the court shall have regard—

(a) to whether it was possible to challenge the statement by questioning the person who made it; and

(b) if proceedings have been instituted, as to whether the local law allowed the parties to the proceedings to be

legally represented when the evidence was being taken.”.

**Insertion of new section 99A.**

3. After section 99 of the principal Ordinance (admissibility of evidence of previous conviction), there shall be inserted the following section—

**“Conviction as evidence of commission of offence.**

99A(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 Gibraltar or by a court martial outside Gibraltar 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 his 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 Gibraltar or by a court martial outside Gibraltar, he 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, in so far 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 he is charged, if the accused is proved to have been convicted of the offence—

- (a) by or before any court in Gibraltar; or
- (b) by a court martial outside Gibraltar,

he 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 “court martial” means a court martial constituted under the Army Act 1955 as applied by section 5 of the Gibraltar Regiment Ordinance 1998 and “criminal proceedings” includes proceedings in Gibraltar or elsewhere before a court martial.”

**Insertion of Schedules 3A and 3B to the principal Ordinance.**

4. After Schedule 3 to the principal Ordinance (offences in respect of which one spouse is a competent witness against the other without the consent of the person accused), there shall be inserted the Schedules contained in the Schedule to this Ordinance.

**SCHEDULE**

Section 4

**“Schedule 3A**

Section 94B(3)

**PROVISIONS SUPPLEMENTARY TO SECTION 94B**

1. In any criminal proceedings where it is desired to give a statement in evidence in accordance with section 94B above, 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;

- (c) dealing with any of the matters mentioned in subsection (1) of section 94B above; and
- (d) purporting to be signed by a person occupying a responsible position in relation to the operation of the computer,

shall be evidence of anything stated in it; and for the purposes of this paragraph it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

2. Notwithstanding paragraph 1 above, a court may require oral evidence to be given of anything of which evidence could be given by a certificate under that paragraph.

3. Any person who in a certificate tendered under paragraph 1 above in the Magistrates' Court, the Supreme Court or the Court of Appeal makes a statement which he knows to be false or does not believe to be true shall be guilty of an offence and liable—

- (a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both;
- (b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.

4. In estimating the weight, if any, to be attached to a statement 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) to the question whether or not the information 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 to it, contemporaneously with the occurrence or existence of the facts dealt with in that information; and

(b) to the question whether or not any person concerned with the supply of information to that computer, or with 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.

5. For the purposes of paragraph 4 above information shall be taken to be supplied to a computer whether it is supplied directly or (with or without human intervention) by means of any appropriate equipment.

6. For the purpose of deciding whether or not a statement is so admissible the court may draw any reasonable inference—

(a) from the circumstances in which the statement was made or otherwise came into being; or

(b) from any other circumstances, including the form and contents of the document in which the statement is contained.

7. Provision may be made by rules of court for supplementing the provisions of section 94B or this Schedule.

### **SCHEDULE 3B**

Section 94F(2)

#### **DOCUMENTARY EVIDENCE - SUPPLEMENTARY**

1. Where a statement is admitted as evidence in criminal proceedings by virtue of sections 94, 94A or 94C to 94F—

(a) any evidence which, if the person making the statement had been called as a witness, would have been admissible as relevant to his credibility as a witness shall be admissible for that purpose in those proceedings;

(b) evidence may, with the leave of the court, be given of any matter which, if that person had been called as a

witness, could have been put to him in cross-examination as relevant to his 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 that person, whether before or after making the statement, made (whether orally or not) some other statement which is inconsistent with it shall be admissible for the purpose of showing that he has contradicted himself.

2. A statement which is given in evidence by virtue of sections 94, 94A or 94C to 94F shall not be capable of corroborating evidence given by the person making it.

3. 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.

4. Without prejudice to the generality of any enactment conferring power to make them—

- (a) Supreme Court Rules;
- (b) Criminal Appeal Rules; and
- (c) Magistrates' Court Rules,

may make such provision as appears to the authority making any of them to be necessary or expedient for the purposes of sections 94 and 94A and sections 94C to 94F.

5. In sections 94 and 94A, “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.”.



*Criminal Procedure(Amendment) Ordinance, 2001* [No. 13 of 2001]

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Passed by the Gibraltar House of Assembly on the 1st day of June, 2001.

D.J. REYES,

Clerk to the Assembly.

