

Chapter 10: Documentary and real evidence

Proof of contents

General statutory provisions

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Footnote 9

Where the document is sought to be used by a witness only to refresh her memory during the course of oral evidence, the document must be made by the witness, or if it is a copy, 'verified' by the witness at an earlier time: s 139(1) of the Act. As to verification, the focus will be on the accuracy of the copy: see *DPP v Sugden* [2018] 2 Cr App R 101 (8), (Admin).

The general rule at common law—primary evidence

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The general rule does not apply where the document is a witness statement used only for the purposes of memory refreshing. See, for example, *DPP v Sugden* [2018] 2 Cr App R 101 (8), (Admin).

The exceptions—secondary evidence

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In *DPP v Sugden* [2018] 2 Cr App R 101 (8), Admin; Crim LR [2018] 752. a criminal case, the court observed that where a party seeks to admit a copy of a document and the other party asks why the original is not available and there is no answer, issues of accuracy may arise in respect of the copy. In these circumstances, the court will balance the probative value of the copy against the prejudicial effect of admitting it. However, there will be no prejudice where there is nothing to suggest that the copy is not a true copy and the accuracy of the copy can be explored by the accused through cross-examination (at [38](1)-(5)).

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Footnote 36

See also *DPP v Sugden* [2018] 2 Cr App R 101 (8), (Admin) at [24].

Real evidence

Views and demonstrations

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As to expert evidence of a reconstruction of an event, this may be presented in-court, for example, in the form of a plan prepared from an out-of-court inspection by the expert of the *locus in quo*, accompanied by the expert's testimonial evidence. In *R v Moore* [2017] EWCA Crim 1304, the Court of Appeal heard, *de bene esse* (or 'provisionally'), fresh evidence comprising four three-dimensional plans of a murder scene and testimony from the expert who prepared the plans. Having heard the evidence however, the court held that the plans lacked probative value and were not admissible in the appeal. See also the update for **Ch 19**.

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Footnote 132

See now the Crown Court Compendium (July 2019), Part 1, 2–5.