
STATUTORY INSTRUMENTS

1996 No. 2592

DEFENCE

**The Criminal Justice Act 1988 (Application
to Service Courts) (Evidence) Order 1996**

<i>Made</i>	- - - -	<i>13th October 1996</i>
<i>Laid before Parliament</i>		<i>14th October 1996</i>
<i>Coming into force</i>	- -	<i>4th November 1996</i>

The Secretary of State, in exercise of the powers conferred on him by paragraphs 8, 9 and 10 of Schedule 13 to the Criminal Justice Act 1988(1), hereby makes the following Order:—

Citation and commencement

1. This Order may be cited as the Criminal Justice Act 1988 (Application to Service Courts) (Evidence) Order 1996 and shall come into force on 4th November 1996.

Application of sections 32, 32A and 34A of the Criminal Justice Act 1988

2. Sections 32(1) to (3), 32A and 34A of the Criminal Justice Act 1988(2) shall have effect in relation to proceedings before Service courts subject to the modifications for which paragraph 8(2) of Schedule 13 to that Act provides, and to the further modifications specified in the Schedule to this Order.

Revocation

3. The Criminal Justice Act 1988 (Application to Service Courts) (Evidence through Television Links) Order 1993(3) is hereby revoked.

(1) 1988 c. 33; Schedule 13 was amended by the Armed Forces Act 1996 (c. 46), section 7.
(2) Section 32 was amended by the Criminal Justice Act 1991 (c. 53), section 55. Section 32A was inserted by the Criminal Justice Act 1991 (c. 53), section 54. It was amended by the Criminal Justice and Public Order Act 1994 (c. 33), section 50 and it will be further amended by the Criminal Procedure and Investigations Act 1996 (c. 25), section 62, when that section comes into force. Section 34A was inserted by the Criminal Justice Act 1991 (c. 53), section 55.
(3) S.I.1993/244.

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Ministry of Defence
13th October 1996

Nicholas Soames
Minister of State,

SCHEDULE

Article 2

<i>Section</i>	<i>Modifications</i>
Section 32	<p>In subsection (1), for the words “to which subsection (1A) below applies” there shall be substituted the words “before Service courts”.</p> <p>After subsection (1A) there shall be added the following subsection—</p> <p>“(1B) In this section—</p> <p>“child” means a person who—</p> <p>(a) in the case of an offence to which section 32(2)(a), (b) or (bb) below applies, or which consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of such an offence, is under fourteen years of age; or</p> <p>(b) in the case of an offence to which section 32(2)(c) or (cc) below applies, or which consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, such an offence, is under seventeen years of age;</p> <p>“Service courts” has the same meaning as in paragraph 1 of Schedule 13 to this Act.”.</p> <p>In subsection (2), after paragraph (b) there shall be added the following paragraph—</p> <p>“(bb) to an offence under the Army Act 1955 (other than section 70), the Air Force Act 1955 (other than section section) and the Naval Discipline Act 1957 (other than section 42) which involves an assault on, or injury or a threat of injury to, a person or cruelty to a person under sixteen years of age;”.</p> <p>In subsection (2), after paragraph (c) there shall be omitted the word “and” and there shall be added the following paragraph—</p> <p>“(cc) to an offence under the Army Act 1955 (other than section 70), the Air Force Act 1955 (other than section 70) and the Naval Discipline Act 1957 (other than section 42)</p>

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which involves sexual or indecent behaviour; and”.

In subsection (2)(d), for the words “paragraph (a), (b) or (c)” there shall be substituted the words “paragraph (a), (b), (bb), (c) or (cc)”.

After subsection (2) there shall be added the following subsections—

“(2A) Where—

(a) the court gives leave for a person to give evidence through a live television link, and

(b) the leave is given by virtue of subsection (1)(b) above,

then, subject to subsection (2B) below, the person concerned may not give evidence otherwise than through a live television link.

(2B) in a case falling within subsection (2A) above the court may give permission for the person to give evidence otherwise than through a live television link if it appears to the court to be in the interests of justice to give such permission.

(2C) Permission may be given under subsection (2B) above—

(a) on an application by a party to the case, or

(b) of the court’s own motion;

but no application may be made under paragraph (a) above unless there has been a material change of circumstances since the leave was given by virtue of subsection (1)(b) above.”.

Section 32A

For subsection (1) there shall be substituted the following subsection—

“(1) This section applies to proceedings before Service courts for any offence to which section 32(2) above applies.”.

In subsection (7)(a), for the words “section 32(2)(a) or (b)” there shall be substituted the words “section 32(2)(a), (b) or (bb)”.

In subsection (7)(b), for the words “section 32(2)(c)” there shall be substituted the words “section 32(2)(c) or (cc)”.

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In subsection (7), after the definition of “child” there shall be added the following definition—
““Service courts” has the same meaning as in paragraph 1 of Schedule 13 to this Act.”.

In subsection (8), for the words “paragraph (a), (b) or (c) of section 32(2)” there shall be substituted the words “paragraph (a), (b), (bb), (c) or (cc) of section 32(2)”.

After subsection (12) there shall be added the following subsection—

“(13) Any reference in this section to section 32(2) (howsoever expressed) shall be to that subsection as modified by an order made under paragraph 8 of that Schedule.”.

Section 34A

After subsection (2) there shall be added the following subsection—

“(3) Any reference in this section—

- (a) to section 32(2) shall be to that subsection as modified by an order made under paragraph 8 of that Schedule; and
- (b) to section 32A shall be to that section as modified by an order made under paragraph 9 of that Schedule.”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies the provisions of sections 32(1) to (3), 32A and 34A of the Criminal Justice Act 1988 (c. 33) (the 1988 Act), with modifications, to proceedings before Service courts. The provisions relate to the giving of evidence by witnesses other than the accused through a live television link and by video recording of an interview, and prohibit the cross-examination of a child witness by the accused in person. The Order revokes the Criminal Justice Act 1988 (Application to Service Courts) (Evidence through Television Links) Order 1993, which applied only section 32(1) to (3) of the 1988 Act to Service proceedings.

Sub-paragraph (2) of paragraph 8 of Schedule 13 to the 1988 Act provides for certain modifications to section 32 of the 1988 Act in its application before Service courts; Article 2 and the Schedule to the Order make further modifications to all three sections applied. The principle modifications are to extend the provisions to proceedings where the offence being tried is a Service offence (under the

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Army Act 1955 (c. 18), the Air Force Act 1955 (c. 19) and the Naval Discipline Act 1957 (c. 53)) which involves violent, cruel or sexual behaviour.