



Criminal Justice Act 1991

1991 CHAPTER 53

PART III

CHILDREN AND YOUNG PERSONS

Children's evidence

52 Competence of children as witnesses

(1) After section 33 of the 1988 Act there shall be inserted the following section—

“33A Evidence given by children

- (1) A child's evidence in criminal proceedings shall be given unsworn.
 - (2) A deposition of a child's unsworn evidence may be taken for the purposes of criminal proceedings as if that evidence had been given on oath.
 - (3) In this section “child” means a person under fourteen years of age.”
- (2) Subsection (1) of section 38 of the 1933 Act (evidence of child of tender years to be given on oath or in certain circumstances unsworn) shall cease to have effect; and accordingly the power of the court in any criminal proceedings to determine that a particular person is not competent to give evidence shall apply to children of tender years as it applies to other persons.

53 Notices of transfer in certain cases involving children

- (1) If a person has been charged with an offence to which section 32(2) of the 1988 Act applies (sexual offences and offences involving violence or cruelty) and the Director of Public Prosecutions is of the opinion—
- (a) that the evidence of the offence would be sufficient for the person charged to be committed for trial;
 - (b) that a child who is alleged—

Status: This is the original version (as it was originally enacted).

- (i) to be a person against whom the offence was committed; or
 - (ii) to have witnessed the commission of the offence,
- will be called as a witness at the trial; and
- (c) that, for the purpose of avoiding any prejudice to the welfare of the child, the case should be taken over and proceeded with without delay by the Crown Court,
- a notice (“notice of transfer”) certifying that opinion may be served by or on behalf of the Director on the magistrates' court in whose jurisdiction the offence has been charged.
- (2) A notice of transfer shall be served before the magistrates' court begins to inquire into the case as examining justices.
 - (3) On the service of a notice of transfer the functions of the magistrates' court shall cease in relation to the case except as provided by paragraphs 2 and 3 of Schedule 6 to this Act or by section 20(4) of the Legal Aid Act 1988.
 - (4) The decision to serve a notice of transfer shall not be subject to appeal or liable to be questioned in any court.
 - (5) Schedule 6 to this Act (which makes further provision in relation to notices of transfer) shall have effect.
 - (6) In this section “child” means a person who—
 - (a) in the case of an offence falling within section 32(2)(a) or (b) of the 1988 Act, is under fourteen years of age or, if he was under that age when any such video recording as is mentioned in section 32A(2) of that Act was made in respect of him, is under fifteen years of age; or
 - (b) in the case of an offence falling within section 32(2)(c) of that Act, is under seventeen years of age or, if he was under that age when any such video recording was made in respect of him, is under eighteen years of age.
 - (7) Any reference in subsection (6) above to an offence falling within paragraph (a), (b) or (c) of section 32(2) of that Act includes a reference to an offence which consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within that paragraph.

54 Video recordings of testimony from child witnesses

After section 32 of the 1988 Act (evidence through television links) there shall be inserted the following section—

“32A Video recordings of testimony from child witnesses

- (1) This section applies in relation to the following proceedings, namely—
 - (a) trials on indictment for any offence to which section 32(2) above applies;
 - (b) appeals to the criminal division of the Court of Appeal and hearings of references under section 17 of the Criminal Appeal Act 1968 in respect of any such offence; and
 - (c) proceedings in youth courts for any such offence and appeals to the Crown Court arising out of such proceedings.

Status: This is the original version (as it was originally enacted).

- (2) In any such proceedings a video recording of an interview which—
- (a) is conducted between an adult and a child who is not the accused or one of the accused (“the child witness”); and
 - (b) relates to any matter in issue in the proceedings,
- may, with the leave of the court, be given in evidence in so far as it is not excluded by the court under subsection (3) below.
- (3) Where a video recording is tendered in evidence under this section, the court shall (subject to the exercise of any power of the court to exclude evidence which is otherwise admissible) give leave under subsection (2) above unless—
- (a) it appears that the child witness will not be available for cross-examination;
 - (b) any rules of court requiring disclosure of the circumstances in which the recording was made have not been complied with to the satisfaction of the court; or
 - (c) the court is of the opinion, having regard to all the circumstances of the case, that in the interests of justice the recording ought not to be admitted;
- and where the court gives such leave it may, if it is of the opinion that in the interests of justice any part of the recording ought not to be admitted, direct that that part shall be excluded.
- (4) In considering whether any part of a recording ought to be excluded under subsection (3) above, the court shall consider whether any prejudice to the accused, or one of the accused, which might result from the admission of that part is outweighed by the desirability of showing the whole, or substantially the whole, of the recorded interview.
- (5) Where a video recording is admitted under this section—
- (a) the child witness shall be called by the party who tendered it in evidence;
 - (b) that witness shall not be examined in chief on any matter which, in the opinion of the court, has been dealt with in his recorded testimony.
- (6) Where a video recording is given in evidence under this section, any statement made by the child witness which is disclosed by the recording shall be treated as if given by that witness in direct oral testimony; and accordingly—
- (a) any such statement shall be admissible evidence of any fact of which such testimony from him would be admissible;
 - (b) no such statement shall be capable of corroborating any other evidence given by him;
- and 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).
- (7) In this section “child” means a person who—
- (a) in the case of an offence falling within section 32(2)(a) or (b) above, is under fourteen years of age or, if he was under that age when the video recording was made, is under fifteen years of age; or

Status: This is the original version (as it was originally enacted).

- (b) in the case of an offence falling within section 32(2)(c) above, is under seventeen years of age or, if he was under that age when the video recording was made, is under eighteen years of age.
- (8) Any reference in subsection (7) above to an offence falling within paragraph (a), (b) or (c) of section 32(2) above includes a reference to an offence which consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within that paragraph.
- (9) In this section—
 - “statement” includes any representation of fact, whether made in words or otherwise;
 - “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.
- (10) A magistrates' court inquiring into an offence as examining justices under section 6 of the Magistrates' Courts Act 1980 may consider any video recording as respects which leave under subsection (2) above is to be sought at the trial, notwithstanding that the child witness is not called at the committal proceedings.
- (11) Without prejudice to the generality of any enactment conferring power to make rules of court, such rules may make such provision as appears to the authority making them to be necessary or expedient for the purposes of this section.
- (12) Nothing in this section shall prejudice the admissibility of any video recording which would be admissible apart from this section.”

55 Further amendments of enactments relating to children's evidence

- (1) In section 103 of the 1980 Act (evidence of children in committal proceedings) subsection (3)(a) shall cease to have effect and for subsection (5) there shall be substituted the following subsection—
 - “(5) In this section “child” has the same meaning as in section 53 of the Criminal Justice Act 1991.”
- (2) In subsection (1) of section 32 of the 1988 Act (evidence through television links)—
 - (a) for the words from “on a trial” to “1968” there shall be substituted the words “in proceedings to which subsection (1A) below applies”; and
 - (b) for paragraph (b) there shall be substituted the following paragraph—
 - “(b) the witness is a child, or is to be cross-examined following the admission under section 32A below of a video recording of testimony from him, and the offence is one to which subsection (2) below applies,”.
- (3) After that subsection there shall be inserted the following subsection—
 - “(1A) This subsection applies—
 - (a) to trials on indictment, appeals to the criminal division of the Court of Appeal and hearings of references under section 17 of the Criminal Appeal Act 1968; and

Status: This is the original version (as it was originally enacted).

(b) to proceedings in youth courts and appeals to the Crown Court arising out of such proceedings.”

(4) After subsection (3) of that section there shall be inserted the following subsections—

“(3A) Where, in the case of any proceedings before a youth court—

- (a) leave is given by virtue of subsection (1)(b) above for evidence to be given through a television link; and
- (b) suitable facilities for receiving such evidence are not available at any petty-sessional court-house in which the court can (apart from this subsection) lawfully sit,

the court may sit for the purposes of the whole or any part of those proceedings at any place at which such facilities are available and which has been appointed for the purposes of this subsection by the justices acting for the petty sessions area for which the court acts.

(3B) A place appointed under subsection (3) above may be outside the petty sessions area for which it is appointed; but it shall be deemed to be in that area for the purpose of the jurisdiction of the justices acting for that area.”

(5) In subsection (5) of that section, for paragraphs (a) and (b) there shall be substituted the words “Magistrates' Courts Rules, Crown Court Rules and Criminal Appeal Rules”.

(6) After subsection (5) of that section there shall be inserted the following subsection—

“(6) Subsection (7) of section 32A below shall apply for the purposes of this section as it applies for the purposes of that section, but with the omission of the references to a person being, in the cases there mentioned, under the age of fifteen years or under the age of eighteen years.”

(7) After section 34 of the 1988 Act there shall be inserted the following section—

“34A Cross-examination of alleged child victims

(1) No person who is charged with an offence to which section 32(2) above applies shall cross-examine in person any witness who—

- (a) is alleged—
 - (i) to be a person against whom the offence was committed; or
 - (ii) to have witnessed the commission of the offence; and
- (b) is a child, or is to be cross-examined following the admission under section 32A above of a video recording of testimony from him.

(2) Subsection (7) of section 32A above shall apply for the purposes of this section as it applies for the purposes of that section, but with the omission of the references to a person being, in the cases there mentioned, under the age of fifteen years or under the age of eighteen years.”