

# **YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999**

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## **EXPLANATORY NOTES**

### **SUMMARY**

#### **Part I - Referrals to Youth Offender Panels**

14. This introduces a new power for magistrates in England and Wales to sentence young offenders by way of a referral to a youth offender panel.
15. It sets out the circumstances in which the new power will be available to the courts and the administrative arrangements for referral to a youth offender panel. It amends the Crime and Disorder Act 1998 to add to the functions of youth offending teams by giving them specific responsibilities for setting up youth offender panels and monitoring and recording the progress of young offenders subject to referral orders.
16. It describes the arrangements for meetings between the panel and the young offender and for agreeing a contract between the panel and the young offender. The contract will set out a programme for the offender to follow.
17. It describes the arrangements for monitoring the contract and the consequences for a young offender who fails to comply with the terms of the contract (and thus the referral order). It addresses the position of someone who is convicted of another offence during the referral period.
18. It gives the Secretary of State the power to make regulations to extend the cases in which referral orders may be made and to issue regulations and guidance on such matters as the qualifying criteria for youth offender panel members and the possible components of the contract to be agreed with the young offender.

#### **Part II: The giving of evidence or information for the purposes of criminal proceedings**

19. This part of the Act makes a number of measures available to help witnesses (other than the defendant) who might otherwise have difficulty giving evidence in criminal proceedings or who might be reluctant to do so.
20. The first Chapter sets out who is eligible to apply for special measures to help them give evidence in court. There are three categories: children under the age of 17; those who suffer from a mental or physical disorder, or have a disability or impairment that is likely to affect their evidence; and those whose evidence is likely to be affected by their fear or distress at giving evidence in the proceedings.
21. Courts will determine whether a witness falls into any of these categories, although witnesses who are alleged to be victims of a sexual offence (ie sex offence complainants) will be considered to be eligible for help with giving evidence unless they tell the court that they do not want to be considered eligible. Courts must also

determine whether making particular special measures available to an eligible witness will be likely to improve the quality of the evidence given by the witness.

22. Both the prosecution and defence will be able to apply, normally before the trial, for the court to make a direction authorising the use of special measures for a witness they are calling. Courts may also decide to make a direction even if no such application has been made.
23. The special measures that can be authorised, once the Secretary of State has notified a court that it can make them available for the purposes of the Act, are:
  - Screens, to ensure that the witness does not see the defendant.
  - Allowing an interview with the witness, which has been video-recorded before the trial, to be shown as the witness's evidence-in-chief at trial.
  - Allowing a witness to give evidence from outside the court by live television link.
  - Clearing people from the court so that evidence can be given in private.
  - Not wearing the court dress of wigs and gowns.
  - Allowing a witness to be cross-examined before the trial about their evidence and a video recording of that cross-examination to be shown at trial instead of the witness being cross-examined live at trial.
  - Allowing an approved intermediary to help a witness communicate with legal representatives and the court.
  - Allowing a witness to use communication aids.
24. The second Chapter prohibits defendants from personally cross-examining witnesses in the following circumstances:
  - When the witness is the alleged victim of a sexual offence.
  - When the witness is a child who is either the alleged victim, or a witness to the commission of the alleged offence, in a case involving sexual offences, kidnapping or abduction, cruelty or physical assault. This includes child witnesses who are co-defendants.
  - In any other case, when the court is satisfied, upon an application or on its own initiative, that the circumstances of the case merit it.

25 In such circumstances, the defendant must appoint a legal representative to conduct the cross-examination on his behalf. Where the defendant refuses or fails to do so, the court must consider whether to appoint a legal representative to test the witness's evidence in the defendant's interests.
26. The third Chapter creates a new statutory framework to restrict the evidence that can be presented, or the questions that can be asked, about an alleged victim's previous sexual behaviour in sexual offence trials. The defence will have to apply to the court to introduce evidence or ask questions on this subject, and the circumstances where it will be allowed to do so will be strictly limited.
27. All evidence of this sort will have to be relevant to an issue in the case or needed to rebut prosecution evidence. Evidence in relation to actual consent will be particularly tightly constrained. It will also have to relate to specific alleged instances of behaviour, be significant enough to affect the jury's or the court's determination and (except where it is needed to rebut prosecution evidence) not be designed to impugn the complainant's credibility.
28. The fourth Chapter extends the restrictions on reporting or publishing information that can identify alleged juvenile offenders and child victims of and witnesses to criminal

*These notes refer to the Youth Justice and Criminal Evidence Act 1999 (c.23) which received Royal Assent on 27 July 1999*

offences. The restrictions in the Act will apply from the moment a criminal investigation into an alleged offence begins, and will cover reporting anywhere in the UK. The restrictions do not, however, apply to proceedings which take place in Scotland.

29. Courts will also be able to order reporting restrictions to prevent adult witnesses from being identified in the press, if they are satisfied that the witness would otherwise be in such fear or distress that it would be likely to affect the quality of their evidence or their co-operation with the case.
30. The fifth Chapter provides that everyone is competent to give evidence in criminal cases if they can understand the questions put to them and can answer those questions in a way that enables the court to understand them.
31. All witnesses aged 14 and over will be sworn before giving evidence unless the court is satisfied that they do not have a sufficient appreciation of the solemnity of the oath. In such a case their evidence, like that of witnesses aged under 14, can be given unsworn if they are competent to give evidence.
32. The sixth Chapter prohibits inferences from being drawn from silence when a suspect is questioned at a police station while denied access to legal advice, restricts the use that can be made of answers obtained under compulsion under financial regulatory legislation and repeals section 69 of the Police and Criminal Evidence Act 1984 (which imposed restrictions on the use of computer evidence).

**Part III**

33. The remainder of the Act contains supplementary and consequential provisions.