



Criminal Evidence (Witness Anonymity) Act 2008

2008 CHAPTER 15

Application of provisions etc.

9 Proceedings to which new rules apply

- (1) Sections 2 to 8 apply to criminal proceedings in cases where—
 - (a) the trial or hearing begins on or after the day on which this Act is passed, or
 - (b) the trial or hearing has begun, but has not ended, before that day.
- (2) Section 10 applies to certain proceedings falling within subsection (1)(b).

10 Pre-commencement anonymity orders: existing proceedings

- (1) This section has effect in relation to criminal proceedings in cases where—
 - (a) the trial or hearing has begun, but has not ended, before commencement, and
 - (b) the court has made a pre-commencement anonymity order in relation to a witness at the trial or hearing.
- (2) Subsection (3) applies if the witness has not begun to give evidence under the terms of that order before commencement.
- (3) In such a case the court—
 - (a) must consider whether that order was one that the court could have made if this Act had been in force at the material time,
 - (b) if it considers that that order was one that it could have made in those circumstances, may direct that the order is to remain in place, and
 - (c) otherwise, must discharge the order and consider whether instead it should make a witness anonymity order in relation to the witness in accordance with sections 2 to 5.

- (4) Any witness anonymity order made by virtue of subsection (3)(c) must be made so as to come into effect immediately on the discharge of the pre-commencement anonymity order.
- (5) Subsections (6) and (7) apply if the witness began before commencement to give evidence under the terms of the order mentioned in subsection (1)(b) (whether or not he or she has finished doing so).
- (6) In such a case the court must consider whether the effect of that order is that the defendant has been prevented from receiving a fair trial, having regard (in particular) to—
 - (a) whether the order was one that the court could have made if this Act had been in force at the material time, and
 - (b) whether the court should exercise any power to give a direction to the jury (if there is one) regarding the evidence given under the terms of the order.
- (7) If the court determines that the defendant has been prevented from receiving a fair trial, it must give such directions as it considers appropriate for and in connection with bringing the trial or hearing to a conclusion.
- (8) In this section—
 - “commencement” means the day on which this Act is passed;
 - “pre-commencement anonymity order” means an order made before commencement that falls within section 1(2).

11 Pre-commencement anonymity orders: appeals

- (1) This section applies where—
 - (a) an appeal court is considering an appeal against a conviction in criminal proceedings in a case where the trial ended before commencement, and
 - (b) the court from which the appeal lies (“the trial court”) made a pre-commencement anonymity order in relation to a witness at the trial.
- (2) The appeal court—
 - (a) may not treat the conviction as unsafe solely on the ground that the trial court had no power at common law to make the order mentioned in subsection (1)(b), but
 - (b) must treat the conviction as unsafe if it considers—
 - (i) that the order was not one that the trial court could have made if this Act had been in force at the material time, and
 - (ii) that, as a result of the order, the defendant did not receive a fair trial.
- (3) In this section—
 - “appeal court” means—
 - (a) the Court of Appeal;
 - (b) the Court of Appeal in Northern Ireland; or
 - (c) the Courts-Martial Appeal Court or the Court Martial Appeal Court;
 - “commencement” and “pre-commencement anonymity order” have the meanings given by section 10(8).