



# Criminal Evidence (Witness Anonymity) Act 2008

## 2008 CHAPTER 15

### *Witness anonymity orders*

#### **2 Witness anonymity orders**

- (1) In this Act a “witness anonymity order” is an order made by a court that requires such specified measures to be taken in relation to a witness in criminal proceedings as the court considers appropriate to ensure that the identity of the witness is not disclosed in or in connection with the proceedings.
- (2) The kinds of measures that may be required to be taken in relation to a witness include measures for securing one or more of the following—
  - (a) that the witness’s name and other identifying details may be—
    - (i) withheld;
    - (ii) removed from materials disclosed to any party to the proceedings;
  - (b) that the witness may use a pseudonym;
  - (c) that the witness is not asked questions of any specified description that might lead to the identification of the witness;
  - (d) that the witness is screened to any specified extent;
  - (e) that the witness’s voice is subjected to modulation to any specified extent.
- (3) Subsection (2) does not affect the generality of subsection (1).
- (4) Nothing in this section authorises the court to require—
  - (a) the witness to be screened to such an extent that the witness cannot be seen by—
    - (i) the judge or other members of the court (if any);
    - (ii) the jury (if there is one); or
    - (iii) any interpreter or other person appointed by the court to assist the witness;

- (b) the witness's voice to be modulated to such an extent that the witness's natural voice cannot be heard by any persons within paragraph (a)(i) to (iii).
- (5) In this section "specified" means specified in the witness anonymity order concerned.

### **3 Applications**

- (1) An application for a witness anonymity order to be made in relation to a witness in criminal proceedings may be made to the court by the prosecutor or the defendant.
- (2) Where an application is made by the prosecutor, the prosecutor—
- (a) must (unless the court directs otherwise) inform the court of the identity of the witness, but
  - (b) is not required to disclose in connection with the application—
    - (i) the identity of the witness, or
    - (ii) any information that might enable the witness to be identified, to any other party to the proceedings or his or her legal representatives.
- (3) Where an application is made by the defendant, the defendant—
- (a) must inform the court and the prosecutor of the identity of the witness, but
  - (b) (if there is more than one defendant) is not required to disclose in connection with the application—
    - (i) the identity of the witness, or
    - (ii) any information that might enable the witness to be identified, to any other defendant or his or her legal representatives.
- (4) Accordingly, where the prosecutor or the defendant proposes to make an application under this section in respect of a witness, any relevant material which is disclosed by or on behalf of that party before the determination of the application may be disclosed in such a way as to prevent—
- (a) the identity of the witness, or
  - (b) any information that might enable the witness to be identified, from being disclosed except as required by subsection (2)(a) or (3)(a).
- (5) "Relevant material" means any document or other material which falls to be disclosed, or is sought to be relied on, by or on behalf of the party concerned in connection with the proceedings or proceedings preliminary to them.
- (6) The court must give every party to the proceedings the opportunity to be heard on an application under this section.
- (7) But subsection (6) does not prevent the court from hearing one or more parties in the absence of a defendant and his or her legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.
- (8) Nothing in this section is to be taken as restricting any power to make rules of court.

### **4 Conditions for making order**

- (1) This section applies where an application is made for a witness anonymity order to be made in relation to a witness in criminal proceedings.

- (2) The court may make such an order only if it is satisfied that Conditions A to C below are met.
- (3) Condition A is that the measures to be specified in the order are necessary—
  - (a) in order to protect the safety of the witness or another person or to prevent any serious damage to property, or
  - (b) in order to prevent real harm to the public interest (whether affecting the carrying on of any activities in the public interest or the safety of a person involved in carrying on such activities, or otherwise).
- (4) Condition B is that, having regard to all the circumstances, the taking of those measures would be consistent with the defendant receiving a fair trial.
- (5) Condition C is that it is necessary to make the order in the interests of justice by reason of the fact that it appears to the court that—
  - (a) it is important that the witness should testify, and
  - (b) the witness would not testify if the order were not made.
- (6) In determining whether the measures to be specified in the order are necessary for the purpose mentioned in subsection (3)(a), the court must have regard (in particular) to any reasonable fear on the part of the witness—
  - (a) that the witness or another person would suffer death or injury, or
  - (b) that there would be serious damage to property,if the witness were to be identified.

## **5 Relevant considerations**

- (1) When deciding whether Conditions A to C in section 4 are met in the case of an application for a witness anonymity order, the court must have regard to—
  - (a) the considerations mentioned in subsection (2) below, and
  - (b) such other matters as the court considers relevant.
- (2) The considerations are—
  - (a) the general right of a defendant in criminal proceedings to know the identity of a witness in the proceedings;
  - (b) the extent to which the credibility of the witness concerned would be a relevant factor when the weight of his or her evidence comes to be assessed;
  - (c) whether evidence given by the witness might be the sole or decisive evidence implicating the defendant;
  - (d) whether the witness's evidence could be properly tested (whether on grounds of credibility or otherwise) without his or her identity being disclosed;
  - (e) whether there is any reason to believe that the witness—
    - (i) has a tendency to be dishonest, or
    - (ii) has any motive to be dishonest in the circumstances of the case,having regard (in particular) to any previous convictions of the witness and to any relationship between the witness and the defendant or any associates of the defendant;
  - (f) whether it would be reasonably practicable to protect the witness's identity by any means other than by making a witness anonymity order specifying the measures that are under consideration by the court.

## **6 Discharge or variation of order**

- (1) A court that has made a witness anonymity order in relation to any criminal proceedings may subsequently discharge or vary (or further vary) the order if it appears to the court to be appropriate to do so in view of the provisions of sections 4 and 5 that applied to the making of the order.
- (2) The court may do so—
  - (a) on an application made by a party to the proceedings if there has been a material change of circumstances since the relevant time, or
  - (b) on its own initiative.
- (3) “The relevant time” means—
  - (a) the time when the order was made, or
  - (b) if a previous application has been made under subsection (2), the time when the application (or the last application) was made.

## **7 Warning to jury**

- (1) Subsection (2) applies where, on a trial on indictment with a jury, any evidence has been given by a witness at a time when a witness anonymity order applied to the witness.
- (2) The judge must give the jury such warning as the judge considers appropriate to ensure that the fact that the order was made in relation to the witness does not prejudice the defendant.

## **8 Special provisions for service courts**

- (1) Subsections (2) and (3) apply in relation to criminal proceedings before a service court consisting of a judge advocate and other members.
- (2) Any decision falling to be made by the court in such proceedings under sections 2 to 6 is to be made by the judge advocate alone.
- (3) If any evidence is given by a witness in such proceedings at a time when a witness anonymity order applies to the witness, the judge advocate must give the other members such warning as the judge advocate considers appropriate to ensure that the fact that the order was made in relation to the witness does not prejudice the defendant.
- (4) Each of the provisions mentioned in subsection (5) has effect with the modification set out in that subsection in a case where—
  - (a) a witness anonymity order is made by a service court to which that provision applies, and
  - (b) a person does anything in relation to the order which would, if the court had been a court of law having power to commit for contempt, have been contempt of that court.
- (5) In such a case—
  - (a) section 101(1) of the Army Act 1955 (3 & 4 Eliz. 2 c. 18) has effect with the omission of the words “not subject to military law”;
  - (b) section 101(1) of the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) has effect with the omission of the words “not subject to air-force law”; and

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

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- (c) section 65(1) of the Naval Discipline Act 1957 (c. 53) has effect with the omission of the words “not subject to this Act”.