

Status: This version of this provision is prospective.

Changes to legislation: Coroners and Justice Act 2009, Section 104 is up to date with all changes known to be in force on or before 07 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes



Coroners and Justice Act 2009

2009 CHAPTER 25

PART 3

CRIMINAL EVIDENCE, INVESTIGATIONS AND PROCEDURE

CHAPTER 3

VULNERABLE AND INTIMIDATED WITNESSES

Evidence of certain accused persons

PROSPECTIVE

104 Examination of accused through intermediary

(1) After section 33B of the Youth Justice and Criminal Evidence Act 1999 (c. 23) insert—

“33BA Examination of accused through intermediary

- (1) This section applies to any proceedings (whether in a magistrates' court or before the Crown Court) against a person for an offence.
- (2) The court may, on the application of the accused, give a direction under subsection (3) if it is satisfied—
 - (a) that the condition in subsection (5) is or, as the case may be, the conditions in subsection (6) are met in relation to the accused, and
 - (b) that making the direction is necessary in order to ensure that the accused receives a fair trial.
- (3) A direction under this subsection is a direction that provides for any examination of the accused to be conducted through an interpreter or

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other person approved by the court for the purposes of this section (“an intermediary”).

- (4) The function of an intermediary is to communicate—
- (a) to the accused, questions put to the accused, and
 - (b) to any person asking such questions, the answers given by the accused in reply to them,
- and to explain such questions or answers so far as necessary to enable them to be understood by the accused or the person in question.
- (5) Where the accused is aged under 18 when the application is made the condition is that the accused's ability to participate effectively in the proceedings as a witness giving oral evidence in court is compromised by the accused's level of intellectual ability or social functioning.
- (6) Where the accused has attained the age of 18 when the application is made the conditions are that—
- (a) the accused suffers from a mental disorder (within the meaning of the Mental Health Act 1983) or otherwise has a significant impairment of intelligence and social function, and
 - (b) the accused is for that reason unable to participate effectively in the proceedings as a witness giving oral evidence in court.
- (7) Any examination of the accused in pursuance of a direction under subsection (3) must take place in the presence of such persons as Criminal Procedure Rules or the direction may provide and in circumstances in which—
- (a) the judge or justices (or both) and legal representatives acting in the proceedings are able to see and hear the examination of the accused and to communicate with the intermediary,
 - (b) the jury (if there is one) are able to see and hear the examination of the accused, and
 - (c) where there are two or more accused in the proceedings, each of the other accused is able to see and hear the examination of the accused.
- For the purposes of this subsection any impairment of eyesight or hearing is to be disregarded.
- (8) Where two or more legal representatives are acting for a party to the proceedings, subsection (7)(a) is to be regarded as satisfied in relation to those representatives if at all material times it is satisfied in relation to at least one of them.
- (9) A person may not act as an intermediary in a particular case except after making a declaration, in such form as may be prescribed by Criminal Procedure Rules, that the person will faithfully perform the function of an intermediary.
- (10) Section 1 of the Perjury Act 1911 (perjury) applies in relation to a person acting as an intermediary as it applies in relation to a person lawfully sworn as an interpreter in a judicial proceeding.

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33BB Further provision as to directions under section 33BA(3)

- (1) The court may discharge a direction given under section 33BA(3) at any time before or during the proceedings to which it applies if it appears to the court that the direction is no longer necessary in order to ensure that the accused receives a fair trial (but this does not affect the power to give a further direction under section 33BA(3) in relation to the accused).
- (2) The court may vary (or further vary) a direction given under section 33BA(3) at any time before or during the proceedings to which it applies if it appears to the court that it is necessary for the direction to be varied in order to ensure that the accused receives a fair trial.
- (3) The court may exercise the power in subsection (1) or (2) of its own motion or on an application by a party.
- (4) The court must state in open court its reasons for—
 - (a) giving, varying or discharging a direction under section 33BA(3), or
 - (b) refusing an application for, or for the variation or discharge of, a direction under section 33BA(3),and, if it is a magistrates' court, it must cause those reasons to be entered in the register of its proceedings.”

- (2) In the heading of Chapter 1A of Part 2 of that Act, after “LIVE LINK” insert “ AND INTERMEDIARY ”.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 11A and cross-heading inserted by [2023 c. 41 Sch. 11 para. 1\(1\)](#)
- Sch. 1A inserted by [2023 c. 41 Sch. 11 para. 1\(2\)](#)