



# Domestic Abuse Act 2021

## 2021 CHAPTER 17

### PART 5

#### PROTECTION FOR VICTIMS, WITNESSES, ETC IN LEGAL PROCEEDINGS

##### *Prohibition of cross-examination in person*

#### **65 Prohibition of cross-examination in person in family proceedings**

In the Matrimonial and Family Proceedings Act 1984, after Part 4A insert—

#### **“PART 4B**

#### FAMILY PROCEEDINGS: PROHIBITION OF CROSS-EXAMINATION IN PERSON

#### **31Q Prohibition of cross-examination in person: introductory**

In this Part—

“family proceedings” means—

- (a) proceedings in the family court,
- (b) proceedings in the Family Division of the High Court which are business assigned, by or under section 61 of (and Schedule 1 to) the Senior Courts Act 1981, to that Division of the High Court and no other, and
- (c) proceedings in the civil division of the Court of Appeal arising out of proceedings within paragraph (a) or (b);

“witness”, in relation to any proceedings, includes a party to the proceedings.

---

*Changes to legislation: There are currently no known outstanding effects for the Domestic Abuse Act 2021, Section 65. (See end of Document for details)*

---

### 31R **Prohibition of cross-examination in person: victims of offences**

- (1) In family proceedings, no party to the proceedings who has been convicted of or given a caution for, or is charged with, a specified offence may cross-examine in person a witness who is the victim, or alleged victim, of that offence.
- (2) In family proceedings, no party to the proceedings who is the victim, or alleged victim, of a specified offence may cross-examine in person a witness who has been convicted of or given a caution for, or is charged with, that offence.
- (3) Subsections (1) and (2) do not apply to a conviction or caution that is spent for the purposes of the Rehabilitation of Offenders Act 1974, unless evidence in relation to the conviction or caution is admissible in, or may be required in, the proceedings by virtue of section 7(2), (3) or (4) of that Act.
- (4) Cross-examination in breach of subsection (1) or (2) does not affect the validity of a decision of the court in the proceedings if the court was not aware of the conviction, caution or charge when the cross-examination took place.
- (5) In this section—
  - “caution” means—
    - (a) in the case of England and Wales—
      - (i) a conditional caution given under section 22 of the Criminal Justice Act 2003,
      - (ii) a youth conditional caution given under section 66A of the Crime and Disorder Act 1998, or
      - (iii) any other caution given to a person in England and Wales in respect of an offence which, at the time the caution is given, the person has admitted;
    - (b) in the case of Scotland, anything corresponding to a caution falling within paragraph (a) (however described) which is given to a person in respect of an offence under the law of Scotland;
    - (c) in the case of Northern Ireland—
      - (i) a conditional caution given under section 71 of the Justice Act (Northern Ireland) 2011, or
      - (ii) any other caution given to a person in Northern Ireland in respect of an offence which, at the time the caution is given, the person has admitted;
  - “conviction” means—
    - (a) a conviction by or before a court in England and Wales, Scotland or Northern Ireland;
    - (b) a conviction in service disciplinary proceedings (in England and Wales, Scotland, Northern Ireland, or elsewhere), including—
      - (i) in the case of proceedings in respect of a service offence, anything that under section 376(1) and (2) of the Armed Forces Act 2006 (which relates to summary hearings and the Summary Appeal Court) is to be treated as a conviction for the purposes of that Act, and
      - (ii) in the case of any other service disciplinary proceedings, a finding of guilt in those proceedings;

---

*Changes to legislation: There are currently no known outstanding effects for the Domestic Abuse Act 2021, Section 65. (See end of Document for details)*

---

- (c) a finding in any criminal proceedings (including a finding linked with a finding of insanity) that the person concerned has committed an offence or done the act or made the omission charged;

and “convicted” is to be read accordingly;

“service disciplinary proceedings” means—

- (a) any proceedings (whether or not before a court) in respect of a service offence (except proceedings before a civilian court within the meaning of the Armed Forces Act 2006);
- (b) any proceedings under the Army Act 1955, the Air Force Act 1955, or the Naval Discipline Act 1957 (whether before a court-martial or before any other court or person authorised under any of those Acts to award a punishment in respect of an offence);
- (c) any proceedings before a Standing Civilian Court established under the Armed Forces Act 1976;

“service offence” means—

- (a) a service offence within the meaning of the Armed Forces Act 2006, or
- (b) an SDA offence within the meaning of the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (S.I. 2009/1059);

“specified offence” means an offence which is specified, or of a description specified, in regulations made by the Lord Chancellor.

- (6) The following provisions (which deem a conviction of a person discharged not to be a conviction) do not apply for the purposes of this section to a conviction of a person for an offence in respect of which an order has been made discharging the person absolutely or conditionally—
  - (a) section 14 of the Powers of Criminal Courts (Sentencing) Act 2000;
  - (b) section 82 of the Sentencing Code;
  - (c) section 187 of the Armed Forces Act 2006 or any corresponding earlier enactment.
- (7) For the purposes of this section “offence” includes an offence under a law that is no longer in force.

### 31S **Prohibition of cross-examination in person: persons protected by injunctions etc**

- (1) In family proceedings, no party to the proceedings against whom an on-notice protective injunction is in force may cross-examine in person a witness who is protected by the injunction.
- (2) In family proceedings, no party to the proceedings who is protected by an on-notice protective injunction may cross-examine in person a witness against whom the injunction is in force.
- (3) Cross-examination in breach of subsection (1) or (2) does not affect the validity of a decision of the court in the proceedings if the court was not aware of the protective injunction when the cross-examination took place.

---

*Changes to legislation: There are currently no known outstanding effects for the Domestic Abuse Act 2021, Section 65. (See end of Document for details)*

---

- (4) In this section “protective injunction” means an order, injunction or interdict specified, or of a description specified, in regulations made by the Lord Chancellor.
- (5) For the purposes of this section, a protective injunction is an “on-notice” protective injunction if—
  - (a) the court is satisfied that there has been a hearing at which the person against whom the protective injunction is in force asked, or could have asked, for the injunction to be set aside or varied, or
  - (b) the protective injunction was made at a hearing of which the court is satisfied that both the person who applied for it and the person against whom it is in force had notice.

### **31T Prohibition of cross-examination in person: evidence of domestic abuse**

- (1) In family proceedings, where specified evidence is adduced that a person who is a witness has been the victim of domestic abuse carried out by a party to the proceedings, that party to the proceedings may not cross-examine the witness in person.
- (2) In family proceedings, where specified evidence is adduced that a person who is a party to the proceedings has been the victim of domestic abuse carried out by a witness, that party may not cross-examine the witness in person.
- (3) In this section—
  - “domestic abuse” has the meaning given by section 1 of the Domestic Abuse Act 2021;
  - “specified evidence” means evidence specified, or of a description specified, in regulations made by the Lord Chancellor.
- (4) Regulations under subsection (3) may provide that any evidence which satisfies the court that domestic abuse, or domestic abuse of a specified description, has occurred is specified evidence for the purposes of this section.

### **31U Direction for prohibition of cross-examination in person: other cases**

- (1) In family proceedings, the court may give a direction prohibiting a party to the proceedings from cross-examining (or continuing to cross-examine) a witness in person if—
  - (a) none of sections 31R to 31T operates to prevent the party from cross-examining the witness, and
  - (b) it appears to the court that—
    - (i) the quality condition or the significant distress condition is met, and
    - (ii) it would not be contrary to the interests of justice to give the direction.
- (2) The “quality condition” is met if the quality of evidence given by the witness on cross-examination—
  - (a) is likely to be diminished if the cross-examination (or continued cross-examination) is conducted by the party in person, and

---

*Changes to legislation: There are currently no known outstanding effects for the Domestic Abuse Act 2021, Section 65. (See end of Document for details)*

---

- (b) would be likely to be improved if a direction were given under this section.
- (3) The “significant distress condition” is met if—
  - (a) the cross-examination (or continued cross-examination) of the witness by the party in person would be likely to cause significant distress to the witness or the party, and
  - (b) that distress is likely to be more significant than would be the case if the witness were cross-examined other than by the party in person.
- (4) A direction under this section may be made by the court—
  - (a) on an application made by a party to the proceedings, or
  - (b) of its own motion.
- (5) In determining whether the quality condition or the significant distress condition is met in the case of a witness or party, the court must have regard to, among other things—
  - (a) any views expressed by the witness as to whether or not the witness is content to be cross-examined by the party in person;
  - (b) any views expressed by the party as to whether or not the party is content to cross-examine the witness in person;
  - (c) the nature of the questions likely to be asked, having regard to the issues in the proceedings;
  - (d) any behaviour by the party in relation to the witness in respect of which the court is aware that a finding of fact has been made in the proceedings or in any other proceedings;
  - (e) any behaviour by the witness in relation to the party in respect of which the court is aware that a finding of fact has been made in the proceedings or in any other proceedings;
  - (f) any behaviour by the party at any stage of the proceedings, both generally and in relation to the witness;
  - (g) any behaviour by the witness at any stage of the proceedings, both generally and in relation to the party;
  - (h) any relationship (of whatever nature) between the witness and the party.
- (6) Any reference in this section to the quality of a witness's evidence is to its quality in terms of completeness, coherence and accuracy.
- (7) For this purpose “coherence” refers to a witness's ability in giving evidence to give answers which—
  - (a) address the questions put to the witness, and
  - (b) can be understood, both individually and collectively.

### **31V Directions under section 31U: supplementary**

- (1) A direction under section 31U has binding effect from the time it is made until the witness in relation to whom it applies is discharged.
- (2) But the court may revoke a direction under section 31U before the witness is discharged, if it appears to the court to be in the interests of justice to do so, either—
  - (a) on an application made by a party to the proceedings, or

---

*Changes to legislation: There are currently no known outstanding effects for the Domestic Abuse Act 2021, Section 65. (See end of Document for details)*

---

- (b) of its own motion.
- (3) The court may revoke a direction under section 31U on an application made by a party to the proceedings only if there has been a material change of circumstances since—
  - (a) the direction was given, or
  - (b) if a previous application has been made by a party to the proceedings, the application (or the last application) was determined.
- (4) The court must state its reasons for—
  - (a) giving a direction under section 31U;
  - (b) refusing an application for a direction under section 31U;
  - (c) revoking a direction under section 31U;
  - (d) refusing an application for the revocation of a direction under section 31U.

### **31W Alternatives to cross-examination in person**

- (1) This section applies where a party to family proceedings is prevented from cross-examining a witness in person by virtue of any of sections 31R to 31U.
- (2) The court must consider whether (ignoring this section) there is a satisfactory alternative means—
  - (a) for the witness to be cross-examined in the proceedings, or
  - (b) of obtaining evidence that the witness might have given under cross-examination in the proceedings.
- (3) If the court decides that there is not, the court must—
  - (a) invite the party to the proceedings to arrange for a qualified legal representative to act for the party for the purpose of cross-examining the witness, and
  - (b) require the party to the proceedings to notify the court, by the end of a period specified by the court, of whether a qualified legal representative is to act for the party for that purpose.
- (4) Subsection (5) applies if, by the end of the period specified under subsection (3) (b), either—
  - (a) the party has notified the court that no qualified legal representative is to act for the party for the purpose of cross-examining the witness, or
  - (b) no notification has been received by the court and it appears to the court that no qualified legal representative is to act for the party for the purpose of cross-examining the witness.
- (5) The court must consider whether it is necessary in the interests of justice for the witness to be cross-examined by a qualified legal representative appointed by the court to represent the interests of the party.
- (6) If the court decides that it is, the court must appoint a qualified legal representative (chosen by the court) to cross-examine the witness in the interests of the party.
- (7) A qualified legal representative appointed by the court under subsection (6) is not responsible to the party.

---

*Changes to legislation: There are currently no known outstanding effects for the Domestic Abuse Act 2021, Section 65. (See end of Document for details)*

---

- (8) For the purposes of this section—
- (a) a reference to cross-examination includes a reference to continuing to conduct cross-examination;
  - (b) “qualified legal representative” means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience (within the meaning of that Act) in family proceedings.

### **31X Costs of legal representatives appointed under section 31W(6)**

- (1) The Lord Chancellor may by regulations make provision for the payment out of central funds of sums in respect of—
- (a) fees or costs properly incurred by a qualified legal representative appointed under section 31W(6), and
  - (b) expenses properly incurred in providing such a person with evidence or other material in connection with the appointment.
- (2) The regulations may provide for sums payable under subsection (1) to be determined by the Lord Chancellor or such other person as the regulations may specify.
- (3) The regulations may provide for sums payable under subsection (1)—
- (a) to be such amounts as are specified in the regulations;
  - (b) to be calculated in accordance with—
    - (i) a rate or scale specified in the regulations, or
    - (ii) other provision made by or under the regulations.

### **31Y Guidance for legal representatives appointed under section 31W(6)**

- (1) The Lord Chancellor may issue guidance in connection with the role which a qualified legal representative appointed under section 31W(6) in connection with any family proceedings is to play in the proceedings, including (among other things) guidance about the effect of section 31W(7).
- (2) A qualified legal representative appointed under section 31W(6) must have regard to any guidance issued under this section.
- (3) The Lord Chancellor may from time to time revise any guidance issued under this section.
- (4) The Lord Chancellor must publish—
- (a) any guidance issued under this section, and
  - (b) any revisions of that guidance.

### **31Z Regulations under Part 4B**

- (1) Any power of the Lord Chancellor to make regulations under this Part—
- (a) is exercisable by statutory instrument,
  - (b) includes power to make different provision for different purposes, and
  - (c) includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision.

---

*Changes to legislation: There are currently no known outstanding effects for the Domestic Abuse Act 2021, Section 65. (See end of Document for details)*

---

(2) A statutory instrument containing regulations under this Part is subject to annulment in pursuance of a resolution of either House of Parliament.”

.....  
**Commencement Information**

**I1** S. 65 in force at 21.7.2022 by S.I. 2022/840, regs. 1(2), 2(a) (with reg. 3)



**Changes to legislation:**

There are currently no known outstanding effects for the Domestic Abuse Act 2021, Section 65.