

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part II: Giving of evidence or information for purposes of criminal proceedings**

##### ***Chapter IV: Reporting restrictions***

154. The sections in this Chapter clarify the legislation that currently restricts the media identification of juveniles involved in the legal process and extend the restrictions back to the point at which a criminal investigation into an offence begins. The Chapter also provides a new power to impose restrictions on reporting the identities of intimidated witnesses and on reporting the making of directions under Chapters I and II of this Part of the Act. The revised provisions ensure that restrictions imposed by courts in England and Wales or Northern Ireland will be enforceable throughout the United Kingdom, including in Scotland. For each restriction, there is a procedure for the restriction to be lifted on application.
155. [Sections 44](#) and [45](#) are based on the restrictions imposed by sections 39 and 49 of the Children and Young Persons Act 1933 (as amended by subsequent legislation) on the reporting of information likely to identify young people involved in court proceedings. The sections impose similar restrictions on reporting, but extend to the identification of young people during the pre-charge stage of criminal investigations. The young people covered by the restrictions are those who are alleged to have committed, been the victim of, or witnessed the commission of the offence that is under investigation.
156. To reflect the wide range of incidents where the mandatory restrictions under section 44 will apply, those who breach the restrictions by identifying child victims and witnesses will have statutory defences in certain circumstances (provided in section 50) against being convicted of an offence of breaching the restrictions. In addition, the restrictions can only be implemented through the draft affirmative resolution procedure (see paragraph 162 below).
157. [Schedule 2](#) makes section 49 of the 1933 Act enforceable in Northern Ireland (as well as in England and Wales and Scotland). The effect of this change, together with the inclusion of Northern Ireland in the extent of sections 44 and 45, is that, where restrictions have effect, it will now be an offence to publish details anywhere in the United Kingdom which might lead to the identification of young people involved in a case triable in England and Wales or Northern Ireland.
158. [Schedule 2](#) also makes several changes to the reporting restrictions imposed by the Sexual Offences (Amendment) Act 1992 – which provides anonymity for complainants of certain sexual offences – to ensure that its provisions are similar to those in sections 44, 45 and 46 of the Act. One consequence of this is to remove any distinction between the type of material which can be published between allegation and charge, and charge and trial (sections 1(1) and 1(2) of the 1992 Act).

159. This change is not intended to disturb any understandings between the media and the police about how far the media can go in giving information about a sex offence case before a suspect has been charged. (Information is sometimes published deliberately, with the complainant's consent, in the hope of prompting witnesses to come forward.)

***Section 44: Restrictions on reporting alleged offences involving persons under 18***

160. [Section 44](#) provides that whenever a criminal investigation begins into an alleged offence against the law of England and Wales or Northern Ireland (or into the alleged commission by a person subject to armed forces law of a corresponding offence anywhere else in the world), no information enabling the identification of any person suspected of committing the offence may be reported by the media if he is under 18. This means that young people who are suspected of committing an offence will enjoy the same protection from media identification as those charged with an offence and brought before the court.
161. The restriction lasts until the individual reaches the age of 18 or a court order dispenses with the restrictions in the interests of justice (*subsection (7)*) or the offence becomes the subject of criminal proceedings. *Subsection (8)* requires the court to have regard to the welfare of that person when making a decision to dispense, with the restrictions, to any extent. *Subsection (11)* provides a right of appeal against the court's decision on such an application. Once the offence is the subject of criminal proceedings, the restrictions under section 45, or under section 49 of the Children and Young Persons Act 1933, should then apply.
162. [Section 44](#) also gives the Secretary of State the power to impose mandatory restrictions in respect of publishing information leading to the identification of children and young people who are alleged to have been the victims of, or witnesses to, a criminal offence. In the same way as for alleged offenders, applications can be made to the courts to lift these restrictions in the interests of justice. But, in addition, a number of defences against prosecution for breach of these restrictions are provided in section 50 which are not available to publishers in respect of the identification of alleged offenders. The presence of these defences turns the restriction from a ban into a presumption against publishing such information.
163. [Section 64\(3\)](#) provides that the restrictions under this section which relate to young complainants and witnesses can only be commenced through the draft affirmative resolution procedure: in other words, both Houses of Parliament would have to agree, after a debate, that these restrictions should be brought into force.
164. Material which is particularly likely to identify a juvenile, such as the juvenile's name, address or image or the identity of the juvenile's school or place of work, is listed in the section. But all material likely to lead to identification is subject to the restriction (*subsections (2) and (6)*). Reporting of any material (even the listed items) is not restricted if it would not lead to such identification.
165. [Paragraph 6](#) of Schedule 7 applies the restrictions to previously unpublished information leading to the identification of young persons involved in alleged offences committed at any time in the past.
166. In Schedule 2, section 49 of the Children and Young Persons Act 1933 is amended to bring its terms into line with the changes made by section 44. The restrictions that will apply during court proceedings will be similar in form to the restrictions which come into play immediately following the start of a criminal investigation, although there are obvious differences. The definition of a witness under section 49 encompasses any witness in the proceedings: section 44 only covers witnesses to the commission of the alleged offence.
167. *Subsection (8)* of section 49 is amended to allow a single justice to dispense with the restrictions following the conviction of a child or young person ([paragraph 3\(6\)](#) of

Schedule 2). Previously, a single justice could only dispense with the restrictions if he thought they were against the interests of the young person or if the young person had escaped from, or was avoiding, lawful custody.

168. *Paragraph 3(9)* of Schedule 2 extends the territorial application of the restrictions in section 49 of the 1933 Act to England, Wales, Scotland and Northern Ireland. This means that publications anywhere in the UK will not be able to report any material likely to lead to the identification of a minor concerned in criminal proceedings in England and Wales or Northern Ireland. But reports of proceedings in courts in Scotland will not be subject to this restriction.

***Section 45: Power to restrict reporting of criminal proceedings involving persons under 18***

169. *Section 45* gives courts the power to impose prohibitions on reporting information leading to the identification of witnesses, complainants or defendants under the age of 18 once proceedings have started, whether in a court in England and Wales or Northern Ireland or in a court martial. It does not apply to proceedings in youth courts or to any other proceedings where the automatic restrictions imposed by section 49 of the Children and Young Persons Act 1933 have effect. The imposition of restrictions under the section is at the discretion of the court. As under section 49 of the 1933 Act, the restrictions can apply to any witness, not just witnesses to the commission of the offence.
170. If the court so wishes, it can choose to impose no restrictions at all or direct that the reporting ban is to have effect with specified exceptions. The restrictions will apply until the person reaches the age of 18 unless, in the meantime, the court decides to lift or relax them.
171. In respect of criminal proceedings, the section replaces section 39 of the Children and Young Persons Act 1933 and will extend to criminal proceedings in Northern Ireland and courts-martial. Section 39 of the 1933 Act is, however, not repealed but is amended by *paragraph 2* of Schedule 2 so that it will now relate solely to non-criminal proceedings. But section 39 will continue to apply in criminal cases begun prior to the date on which the change comes into force.

***Section 46: Power to restrict reports about certain adult witnesses in criminal proceedings***

172. *Section 46* allows courts to impose restrictions on reporting information leading to the identification of an adult witness involved in criminal proceedings, if the court considers that the measure is needed because the witness's fear of, or distress at, giving evidence or co-operating with the party calling him is strongly linked to the likelihood of publicity. Neither "fear" nor "distress" is seen as covering a disinclination to give evidence on account of simple embarrassment.
173. Witnesses qualifying for restrictions under this section will be suffering from the degree of fear or distress that might make them eligible for special measures under Chapter I, although not everyone eligible by virtue of fear or distress for special measures will necessarily also be considered eligible for the protection of a reporting direction.
174. Courts will be able to partially disapply the restrictions if they are satisfied that that is necessary in the interests of justice, or if the restrictions are substantial and unreasonable and it would be in the public interest to relax the restrictions. They will also be able to revoke a direction under this section.
175. *Section 50(7)* allows witnesses protected by a direction under section 46 to give a written waiver allowing reporting which would otherwise be restricted by the direction. This might be appropriate, for example, for witnesses whose circumstances change after they have given evidence.

**Section 47: Restrictions on reporting directions under Chapter I or II**

176. Section 47 prevents the reporting of cases from covering certain aspects of the case before the end of the proceedings (*subsection (6)*). The restrictions apply to special measures directions under Chapter I or directions under section 36 prohibiting the defendant from cross-examining in person any particular witness. Restrictions under this section do not extend to any evidence given by witnesses in the case, or to witnesses' identity. Courts may lift restrictions imposed under this section, but they must consider, in the event of any representations by the defendant against doing so, whether doing so would be in the interests of justice (*subsections (4) and (5)*).
177. Prosecutions for breach of the restrictions imposed by section 47 may only be brought by or with the consent of the Attorney General or, where instituted in Northern Ireland, by or with the consent of the Attorney General for Northern Ireland (see section 49(6)).

**Sections 49, 50, 51 and 52: Offences where reporting restrictions not complied with and defences to the offences**

178. Section 49 sets out the summary offences created by the new reporting restrictions and the penalties which may be imposed on conviction. Sections 49 and 51 specify who can commit the offences. Section 51 provides for the separate prosecution of individuals who are involved in the commission by a corporate body of an offence against section 49. The restrictions relating to offences or proceedings in England and Wales or Northern Ireland, or to armed forces offences or proceedings, will be enforceable throughout the United Kingdom.
179. Section 50 sets out the defences that can be relied on if a publisher or broadcaster is charged with one of the offences under section 49. First, it is a defence to all the offences under section 49 that the person charged did not know or suspect (or have reason to suspect) that the publication included something protected by a reporting restriction.
180. In the case of an offence under section 49 for a breach of section 44(2), it will be a defence to prove that the person charged was not aware, did not suspect or had no reason to suspect, that a criminal investigation had begun when the information was published/broadcast. There is another defence if the breach of section 44(2) involved reporting information about a suspected victim or witness of any offence other than a sexual offence: to satisfy the court that the public interest demanded publication of the information and, because of that, the reporting restriction was substantial and unreasonable. A list of factors to be taken into account in an assessment of where the public interest lies in such situations is provided in section 52.
181. Section 50 also provides that it will be a defence for a person charged with a breach of section 44(2) to show that written consent to the publication of the material in question was obtained. If the person protected by the restriction is aged 16 or 17, he can give consent himself. If he is under 16, someone with appropriate responsibility for his welfare will be able to give consent. The appropriate person can only give written consent after having been reminded, in writing, to consider the welfare of the child. Once given, the notice can be revoked before publication by anyone else with appropriate responsibility for the child or by the child himself.
182. A defence based on such a waiver is not available in respect of reporting information about complainants or witnesses to sexual offences if they are under the age of 16. Waivers cannot be given by appropriate adults who are themselves accused of the alleged offence (*subsection (13)*).
183. The types of publication caught by these provisions are described in section 63(1) and include written reports (including those available on the internet), speeches, television broadcasts (whether analogue or digital) and any other type of communication addressed to the public.