Youth Justice and Criminal Evidence Act 1999

1999 CHAPTER 23

PART II

GIVING OF EVIDENCE OR INFORMATION FOR PURPOSES OF CRIMINAL PROCEEDINGS

CHAPTER I

SPECIAL MEASURES DIRECTIONS IN CASE OF VULNERABLE AND INTIMIDATED WITNESSES

Modifications etc. (not altering text)

C1 Pt. 2 Chs. 1-3 amended (1.9.2001) by 2001 c. 17, **s. 57(2)** (with ss. 56(2), 63(2), 78); S.I. 2001/2161, **art. 2**

C2 Pt. 2 Ch. 1 applied (with modifications) by 1998 c. 37, s. 1I(2)(3) (as inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 143**, 178(8); S.I. 2005/1521, art. 3(1)(s))

C3 Pt. 2 Ch. 1 applied (with modifications) (20.10.2014) by Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), **s. 31(1)-(3)**, 185(1) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/2590, art. 3(a)

C4 Pt. 2 Ch. 1 applied (with modifications) (23.3.2015) by Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), **s. 16(1)-(3)**, 185(1) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/373, art. 4(a)

C5 Pt. 2 Ch. 1 applied (with modifications) (26.5.2016) by Psychoactive Substances Act 2016 (c. 2), **s. 33(1)**(2), 63(2); S.I. 2016/553, reg. 2

Preliminary

16 Witnesses eligible for assistance on grounds of age or incapacity.

(1) For the purposes of this Chapter a witness in criminal proceedings (other than the accused) is eligible for assistance by virtue of this section—

(a) if under the age of **[**[F1]18**]** at the time of the hearing; or

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(b) if the court considers that the quality of evidence given by the witness is likely to be diminished by reason of any circumstances falling within subsection (2).

(2) The circumstances falling within this subsection are—

(a) that the witness—

(i) suffers from mental disorder within the meaning of the [M1]Mental Health Act 1983, or

(ii) otherwise has a significant impairment of intelligence and social functioning;

(b) that the witness has a physical disability or is suffering from a physical disorder.

(3) In subsection (1)(a) "the time of the hearing", in relation to a witness, means the time when it falls to the court to make a determination for the purposes of section 19(2) in relation to the witness.

(4) In determining whether a witness falls within subsection (1)(b) the court must consider any views expressed by the witness.

(5) In this Chapter references to the quality of a witness's evidence are to its quality in terms of completeness, coherence and accuracy; and for this purpose "coherence" refers to a witness's ability in giving evidence to give answers which address the questions put to the witness and can be understood both individually and collectively.

Textual Amendments

F1 Word in s. 16(1)(a) substituted (27.6.2011) by Coroners and Justice Act 2009 (c. 25), **ss. 98(2)**, 182(5) (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)

Modifications etc. (not altering text)

C6 S. 16 applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **3**, 4

Commencement Information

I1 S. 16 wholly in force at 24.7.2002; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 16 in force in so far as not already in force at 24.7.2002 by S.I. 2002/1739, **art. 2(a)**

Marginal Citations

M1 1983 c. 20.

17 Witnesses eligible for assistance on grounds of fear or distress about testifying.

(1) For the purposes of this Chapter a witness in criminal proceedings (other than the accused) is eligible for assistance by virtue of this subsection if the court is satisfied that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings.

(2) In determining whether a witness falls within subsection (1) the court must take into account, in particular—

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(a) the nature and alleged circumstances of the offence to which the proceedings relate;

(b) the age of the witness;

(c) such of the following matters as appear to the court to be relevant, namely—

(i) the social and cultural background and ethnic origins of the witness,

(ii) the domestic and employment circumstances of the witness, and

(iii) any religious beliefs or political opinions of the witness;

(d) any behaviour towards the witness on the part of—

(i) the accused,

(ii) members of the family or associates of the accused, or

(iii) any other person who is likely to be an accused or a witness in the proceedings.

(3) In determining that question the court must in addition consider any views expressed by the witness.

(4) Where the complainant in respect of a sexual offence **[**[F2]or an offence under **[**[F3]section 1 or 2 of the Modern Slavery Act 2015**]]** is a witness in proceedings relating to that offence (or to that offence and any other offences), the witness is eligible for assistance in relation to those proceedings by virtue of this subsection unless the witness has informed the court of the witness' wish not to be so eligible by virtue of this subsection.

[[F4](5) A witness in proceedings relating to a relevant offence (or to a relevant offence and any other offences) is eligible for assistance in relation to those proceedings by virtue of this subsection unless the witness has informed the court of the witness's wish not to be so eligible by virtue of this subsection.

(6) For the purposes of subsection (5) an offence is a relevant offence if it is an offence described in Schedule 1A.

(7) The Secretary of State may by order amend Schedule 1A.**]**

Textual Amendments

F2 Words in s. 17(4) inserted (6.4.2013) by The Trafficking People for Exploitation Regulations 2013 (S.I. 2013/554), reg. 1(b), **Sch. para. 2**

F3 Words in s. 17(4) substituted (31.7.2015) by Modern Slavery Act 2015 (c. 30), **ss. 46(2)**, 61(1); S.I. 2015/1476, reg. 2(e) (with regs. 3, 6, 8)

F4 S. 17(5)-(7) added (27.6.2011) by Coroners and Justice Act 2009 (c. 25), **ss. 99(2)**, 182(5) (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)

Modifications etc. (not altering text)

C7 S. 17 applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **3**, 4

Commencement Information

I2 S. 17 wholly in force at 24.7.2002; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 17 in force in so far as not already in force at 24.7.2002 by S.I. 2002/1739, **art. 2(a)**

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18 Special measures available to eligible witnesses.

(1) For the purposes of this Chapter—

(a) the provision which may be made by a special measures direction by virtue of each of sections 23 to 30 is a special measure available in relation to a witness eligible for assistance by virtue of section 16; and

(b) the provision which may be made by such a direction by virtue of each of sections 23 to 28 is a special measure available in relation to a witness eligible for assistance by virtue of section 17;

but this subsection has effect subject to subsection (2).

(2) Where (apart from this subsection) a special measure would, in accordance with subsection (1)(a) or (b), be available in relation to a witness in any proceedings, it shall not be taken by a court to be available in relation to the witness unless—

(a) the court has been notified by the Secretary of State that relevant arrangements may be made available in the area in which it appears to the court that the proceedings will take place, and

(b) the notice has not been withdrawn.

(3) In subsection (2) "relevant arrangements" means arrangements for implementing the measure in question which cover the witness and the proceedings in question.

(4) The withdrawal of a notice under that subsection relating to a special measure shall not affect the availability of that measure in relation to a witness if a special measures direction providing for that measure to apply to the witness's evidence has been made by the court before the notice is withdrawn.

(5) The Secretary of State may by order make such amendments of this Chapter as he considers appropriate for altering the special measures which, in accordance with subsection (1)(a) or (b), are available in relation to a witness eligible for assistance by virtue of section 16 or (as the case may be) section 17, whether—

(a) by modifying the provisions relating to any measure for the time being available in relation to such a witness,

(b) by the addition—

(i) (with or without modifications) of any measure which is for the time being available in relation to a witness eligible for assistance by virtue of the other of those sections, or

(ii) of any new measure, or

(c) by the removal of any measure.

Modifications etc. (not altering text)

C8 S. 18 applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **3**, 4

Commencement Information

I3 S. 18 wholly in force at 24.7.2002; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 18 in force in so far as not already in force at 24.7.2002 by S.I. 2002/1739, **art. 2(a)**

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Special measures directions

19 Special measures direction relating to eligible witness.

(1) This section applies where in any criminal proceedings—

(a) a party to the proceedings makes an application for the court to give a direction under this section in relation to a witness in the proceedings other than the accused, or

(b) the court of its own motion raises the issue whether such a direction should be given.

(2) Where the court determines that the witness is eligible for assistance by virtue of section 16 or 17, the court must then—

(a) determine whether any of the special measures available in relation to the witness (or any combination of them) would, in its opinion, be likely to improve the quality of evidence given by the witness; and

(b) if so—

(i) determine which of those measures (or combination of them) would, in its opinion, be likely to maximise so far as practicable the quality of such evidence; and

(ii) give a direction under this section providing for the measure or measures so determined to apply to evidence given by the witness.

(3) In determining for the purposes of this Chapter whether any special measure or measures would or would not be likely to improve, or to maximise so far as practicable, the quality of evidence given by the witness, the court must consider all the circumstances of the case, including in particular—

(a) any views expressed by the witness; and

(b) whether the measure or measures might tend to inhibit such evidence being effectively tested by a party to the proceedings.

(4) A special measures direction must specify particulars of the provision made by the direction in respect of each special measure which is to apply to the witness's evidence.

(5) In this Chapter "special measures direction" means a direction under this section.

(6) Nothing in this Chapter is to be regarded as affecting any power of a court to make an order or give leave of any description (in the exercise of its inherent jurisdiction or otherwise)—

(a) in relation to a witness who is not an eligible witness, or

(b) in relation to an eligible witness where (as, for example, in a case where a foreign language interpreter is to be provided) the order is made or the leave is given otherwise than by reason of the fact that the witness is an eligible witness.

Modifications etc. (not altering text)

C9 S. 19 applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **3**, 4

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Commencement Information

I4 S. 19 wholly in force at 24.7.2002; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 19 in force in so far as not already in force at 24.7.2002 by S.I. 2002/1739, **art. 2(a)**

20 Further provisions about directions: general.

(1) Subject to subsection (221.) and section 21(8), a special measures direction has binding effect from the time it is made until the proceedings for the purposes of which it is made are either—

(a) determined (by acquittal, conviction or otherwise), or

(b) abandoned,

in relation to the accused or (if there is more than one) in relation to each of the accused.

(2) The court may discharge or vary (or further vary) a special measures direction if it appears to the court to be in the interests of justice to do so, and may do so either—

(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) of its own motion.

(3) In subsection (2) "the relevant time" means—

(a) the time when the direction was given, or

(b) if a previous application has been made under that subsection, the time when the application (or last application) was made.

(4) Nothing in section 24(2) and (3), 27(4) to (7) or 28(4) to (6) is to be regarded as affecting the power of the court to vary or discharge a special measures direction under subsection (2).

(5) The court must state in open court its reasons for—

(a) giving or varying,

(b) refusing an application for, or for the variation or discharge of, or

(c) discharging,

a special measures direction and, if it is a magistrates' court, must cause them to be entered in the register of its proceedings.

(6) **[**[F5]Criminal Procedure Rules**]** may make provision—

(a) for uncontested applications to be determined by the court without a hearing;

(b) for preventing the renewal of an unsuccessful application for a special measures direction except where there has been a material change of circumstances;

(c) for expert evidence to be given in connection with an application for, or for varying or discharging, such a direction;

(d) for the manner in which confidential or sensitive information is to be treated in connection with such an application and in particular as to its being disclosed to, or withheld from, a party to the proceedings.

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Textual Amendments

F5 Words in s. 20(6) substituted (1.9.2004) by Courts Act 2003 (c. 39), s. 110(1), **Sch. 8 para. 384(a)**; S.I. 2004/2066, art. 2(c)(xix) (with art. 3)

Modifications etc. (not altering text)

C10 S. 20 applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **3**, 4

Commencement Information

I5 S. 20 wholly in force at 24.7.2002; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4): s. 20 in force in so far as not already in force at 24.7.2002 by S.I. 2002/1739, **art. 2(a)**

21 Special provisions relating to child witnesses.

(1) For the purposes of this section—

(a) a witness in criminal proceedings is a "child witness" if he is an eligible witness by reason of section 16(1)(a) (whether or not he is an eligible witness by reason of any other provision of section 16 or 17);

[F6](b) . . . . . and

(c) a "relevant recording", in relation to a child witness, is a video recording of an interview of the witness made with a view to its admission as evidence in chief of the witness.

(2) Where the court, in making a determination for the purposes of section 19(2), determines that a witness in criminal proceedings is a child witness, the court must—

(a) first have regard to subsections (3) to **[**[F7](4C)**]** below; and

(b) then have regard to section 19(2);

and for the purposes of section 19(2), as it then applies to the witness, any special measures required to be applied in relation to him by virtue of this section shall be treated as if they were measures determined by the court, pursuant to section 19(2)(a) and (b)(i), to be ones that (whether on their own or with any other special measures) would be likely to maximise, so far as practicable, the quality of his evidence.

(3) The primary rule in the case of a child witness is that the court must give a special measures direction in relation to the witness which complies with the following requirements—

(a) it must provide for any relevant recording to be admitted under section 27 (video recorded evidence in chief); and

(b) it must provide for any evidence given by the witness in the proceedings which is not given by means of a video recording (whether in chief or otherwise) to be given by means of a live link in accordance with section 24.

(4) The primary rule is subject to the following limitations—

(a) the requirement contained in subsection (3)(a) or (b) has effect subject to the availability (within the meaning of section 18(2)) of the special measure in question in relation to the witness;

(b) the requirement contained in subsection (3)(a) also has effect subject to section 27(2); [F8]...

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[[F9](ba) if the witness informs the court of the witness's wish that the rule should not apply or should apply only in part, the rule does not apply to the extent that the court is satisfied that not complying with the rule would not diminish the quality of the witness's evidence; and**]**

(c) the rule does not apply to the extent that the court is satisfied that compliance with it would not be likely to maximise the quality of the witness's evidence so far as practicable (whether because the application to that evidence of one or more other special measures available in relation to the witness would have that result or for any other reason).

[[F10](4A) Where as a consequence of all or part of the primary rule being disapplied under subsection (4)(ba) a witness's evidence or any part of it would fall to be given as testimony in court, the court must give a special measures direction making such provision as is described in section 23 for the evidence or that part of it.

(4B) The requirement in subsection (4A) is subject to the following limitations—

(a) if the witness informs the court of the witness's wish that the requirement in subsection (4A) should not apply, the requirement does not apply to the extent that the court is satisfied that not complying with it would not diminish the quality of the witness's evidence; and

(b) the requirement does not apply to the extent that the court is satisfied that making such a provision would not be likely to maximise the quality of the witness's evidence so far as practicable (whether because the application to that evidence of one or more other special measures available in relation to the witness would have that result or for any other reason).**]**

[[F11](4C) In making a decision under subsection (4)(ba) or (4B)(a), the court must take into account the following factors (and any others it considers relevant)—

(a) the age and maturity of the witness;

(b) the ability of the witness to understand the consequences of giving evidence otherwise than in accordance with the requirements in subsection (3) or (as the case may be) in accordance with the requirement in subsection (4A);

(c) the relationship (if any) between the witness and the accused;

(d) the witness's social and cultural background and ethnic origins;

(e) the nature and alleged circumstances of the offence to which the proceedings relate.**]**

[F12](5) . . . . . .

[F12](6) . . . . . .

[F12](7) . . . . . .

(8) Where a special measures direction is given in relation to a child witness who is an eligible witness by reason only of section 16(1)(a), then—

(a) subject to subsection (9) below, and

(b) except where the witness has already begun to give evidence in the proceedings,

the direction shall cease to have effect at the time when the witness attains the age of **[**[F13]18**]**.

(9) Where a special measures direction is given in relation to a child witness who is an eligible witness by reason only of section 16(1)(a) and—

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(a) the direction provides—

(i) for any relevant recording to be admitted under section 27 as evidence in chief of the witness, or

(ii) for the special measure available under section 28 to apply in relation to the witness, and

(b) if it provides for that special measure to so apply, the witness is still under the age of **[**[F14]18**]** when the video recording is made for the purposes of section 28,

then, so far as it provides as mentioned in paragraph (a)(i) or (ii) above, the direction shall continue to have effect in accordance with section 20(1) even though the witness subsequently attains that age.

Textual Amendments

F6 S. 21(1)(b) repealed (27.6.2011) by Coroners and Justice Act 2009 (c. 25), ss. 100(2), 182(5), **Sch. 23 Pt. 3** (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)(i)

F7 Word in s. 21(2) substituted (27.6.2011) by Coroners and Justice Act 2009 (c. 25), **ss. 100(3)**, 182(5) (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)

F8 Word in s. 21(4)(b) repealed (27.6.2011) by Coroners and Justice Act 2009 (c. 25), ss. 100(4)(a), 182(5), **Sch. 23 Pt. 3** (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)(i)

F9 S. 21(4)(ba) inserted (27.6.2011) by Coroners and Justice Act 2009 (c. 25), **ss. 100(4)(b)**, 182(5) (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)

F10 S. 21(4A)(4B) inserted (27.6.2011) by Coroners and Justice Act 2009 (c. 25), **ss. 100(5)**, 182(5) (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)

F11 S. 21(4C) inserted (27.6.2011) by Coroners and Justice Act 2009 (c. 25), **ss. 100(6)**, 182(5) (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)

F12 S. 21(5)-(7) repealed (27.6.2011) by Coroners and Justice Act 2009 (c. 25), ss. 100(7), 182(5), **Sch. 23 Pt. 3** (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)(i)

F13 Word in s. 21(8) substituted (27.6.2011) by Coroners and Justice Act 2009 (c. 25), **ss. 98(3)(a)**, 182(5) (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)

F14 Word in s. 21(9)(b) substituted (27.6.2011) by Coroners and Justice Act 2009 (c. 25), **ss. 98(3)(b)**, 182(5) (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)

Modifications etc. (not altering text)

C11 S. 21 applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **3**, 4

Commencement Information

I6 S. 21 wholly in force at 24.7.2002; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 20 in force in so far as not already in force at 24.7.2002 by S.I. 2002/1739, **art. 2(a)**

22 Extension of provisions of section 21 to certain witnesses over **[**[F15]18**]**.

(1) For the purposes of this section—

(a) a witness in criminal proceedings (other than the accused) is a "qualifying witness" if he—

(i) is not an eligible witness at the time of the hearing (as defined by section 16(3)), but

(ii) was under the age of **[**[F16]18**]** when a relevant recording was made;

[F17](b) . . . . . and

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(c) a "relevant recording", in relation to a witness, is a video recording of an interview of the witness made with a view to its admission as evidence in chief of the witness.

[[F18](2) Subsections (2) to (4) and (4C) of section 21, so far as relating to the giving of a direction complying with the requirement contained in section 21(3)(a), apply to a qualifying witness in respect of the relevant recording as they apply to a child witness (within the meaning of that section).**]**

Textual Amendments

F15 Word in s. 22 title substituted (27.6.2011) by Coroners and Justice Act 2009 (c. 25), **ss. 98(4)(a)**, 182(5) (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)

F16 Word in s. 22(1)(a)(ii) substituted (27.6.2011) by Coroners and Justice Act 2009 (c. 25), **ss. 98(4)(b)**, 182(5) (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)

F17 S. 22(1)(b) repealed (27.6.2011) by Coroners and Justice Act 2009 (c. 25), ss. 100(8)(a), 182(5), **Sch. 23 Pt. 3** (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)(i)

F18 S. 22(2) substituted (27.6.2011) by Coroners and Justice Act 2009 (c. 25), **ss. 100(8)(b)**, 182(5) (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)

Modifications etc. (not altering text)

C12 S. 22 applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **3**, 4

Commencement Information

I7 S. 22 wholly in force at 24.7.2002; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 22 in force in so far as not already in force at 24.7.2002 by S.I. 2002/1739, **art. 2(a)**

[[F19]22A Special provisions relating to sexual offences

(1) This section applies where in criminal proceedings relating to a sexual offence (or to a sexual offence and other offences) the complainant in respect of that offence is a witness in the proceedings.

(2) This section does not apply if the place of trial is a magistrates' court.

(3) This section does not apply if the complainant is an eligible witness by reason of section 16(1)(a) (whether or not the complainant is an eligible witness by reason of any other provision of section 16 or 17).

(4) If a party to the proceedings makes an application under section 19(1)(a) for a special measures direction in relation to the complainant, the party may request that the direction provide for any relevant recording to be admitted under section 27 (video recorded evidence in chief).

(5) Subsection (6) applies if—

(a) a party to the proceedings makes a request under subsection (4) with respect to the complainant, and

(b) the court determines for the purposes of section 19(2) that the complainant is eligible for assistance by virtue of section 16(1)(b) or 17.

(6) The court must—

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(a) first have regard to subsections (7) to (9); and
(b) then have regard to section 19(2);

and for the purposes of section 19(2), as it then applies to the complainant, any special measure required to be applied in relation to the complainant by virtue of this section is to be treated as if it were a measure determined by the court, pursuant to section 19(2)(a) and (b)(i), to be one that (whether on its own or with any other special measures) would be likely to maximise, so far as practicable, the quality of the complainant's evidence.

(7) The court must give a special measures direction in relation to the complainant that provides for any relevant recording to be admitted under section 27.

(8) The requirement in subsection (7) has effect subject to section 27(2).

(9) The requirement in subsection (7) does not apply to the extent that the court is satisfied that compliance with it would not be likely to maximise the quality of the complainant's evidence so far as practicable (whether because the application to that evidence of one or more other special measures available in relation to the complainant would have that result or for any other reason).

(10) In this section "relevant recording", in relation to a complainant, is a video recording of an interview of the complainant made with a view to its admission as the evidence in chief of the complainant.**]**

Textual Amendments

F19 S. 22A inserted (27.6.2011) by Coroners and Justice Act 2009 (c. 25), **ss. 101**, 182(5) (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)

Special measures

23 Screening witness from accused.

(1) A special measures direction may provide for the witness, while giving testimony or being sworn in court, to be prevented by means of a screen or other arrangement from seeing the accused.

(2) But the screen or other arrangement must not prevent the witness from being able to see, and to be seen by—
(a) the judge or justices (or both) and the jury (if there is one);
(b) legal representatives acting in the proceedings; and
(c) any interpreter or other person appointed (in pursuance of the direction or otherwise) to assist the witness.

(3) Where two or more legal representatives are acting for a party to the proceedings, subsection (2)(b) is to be regarded as satisfied in relation to those representatives if the witness is able at all material times to see and be seen by at least one of them.

Modifications etc. (not altering text)

C13 S. 23 applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **3**, 4

Status: *Point in time view as at 24/08/2020.*
Changes to legislation: *Youth Justice and Criminal Evidence Act 1999, Part II is up to date with all changes known to be in force on or before 03 June 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)*

Commencement Information

I8 S. 23 wholly in force at 24.7.2002; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 23 in force in so far as not already in force at 24.7.2002 by S.I. 2002/1739, **art. 2(a)**

24 Evidence by live link.

(1) A special measures direction may provide for the witness to give evidence by means of a live link.

[[F20](1A) Such a direction may also provide for a specified person to accompany the witness while the witness is giving evidence by live link.

(1B) In determining who may accompany the witness, the court must have regard to the wishes of the witness.**]**

(2) Where a direction provides for the witness to give evidence by means of a live link, the witness may not give evidence in any other way without the permission of the court.

(3) The court may give permission for the purposes of subsection (2) if it appears to the court to be in the interests of justice to do so, and may do so either—

(a) on an application by a party to the proceedings, if there has been a material change of circumstances since the relevant time, or

(b) of its own motion.

(4) In subsection (3) "the relevant time" means—

(a) the time when the direction was given, or

(b) if a previous application has been made under that subsection, the time when the application (or last application) was made.

[F21](5) . . . . . .

[F21](6) . . . . . .

[F21](7) . . . . . .

(8) In this Chapter "live link" means a live television link or other arrangement whereby a witness, while absent from the courtroom or other place where the proceedings are being held, is able to see and hear a person there and to be seen and heard by the persons specified in section 23(2)(a) to (c).

Textual Amendments

F20 S. 24(1A)(1B) inserted (27.6.2011) by Coroners and Justice Act 2009 (c. 25), **ss. 102(1)**, 182(5) (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)

F21 S. 24(5)-(7) repealed (1.4.2005) by Courts Act 2003 (c. 39), s. 110(1), Sch. 8 para. 385, **Sch. 10**; S.I. 2005/910, art. 3(y)

Modifications etc. (not altering text)

C14 S. 24(1)-(4) applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **3**, 4

C15 S. 24(8) applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **3**, 4

Commencement Information

I9 S. 24 wholly in force at 24.7.2002; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 24 in force in so far as not already in force at 24.7.2002 by S.I. 2002/1739, **art. 2(a)**

25 Evidence given in private.

(1) A special measures direction may provide for the exclusion from the court, during the giving of the witness's evidence, of persons of any description specified in the direction.

(2) The persons who may be so excluded do not include—
- (a) the accused,
- (b) legal representatives acting in the proceedings, or
- (c) any interpreter or other person appointed (in pursuance of the direction or otherwise) to assist the witness.

(3) A special measures direction providing for representatives of news gathering or reporting organisations to be so excluded shall be expressed not to apply to one named person who—
- (a) is a representative of such an organisation, and
- (b) has been nominated for the purpose by one or more such organisations,

unless it appears to the court that no such nomination has been made.

(4) A special measures direction may only provide for the exclusion of persons under this section where—
- (a) the proceedings relate to a sexual offence **[**[F22]or an offence under **[**[F23]section 1 or 2 of the Modern Slavery Act 2015**]**; or
- (b) it appears to the court that there are reasonable grounds for believing that any person other than the accused has sought, or will seek, to intimidate the witness in connection with testifying in the proceedings.

(5) Any proceedings from which persons are excluded under this section (whether or not those persons include representatives of news gathering or reporting organisations) shall nevertheless be taken to be held in public for the purposes of any privilege or exemption from liability available in respect of fair, accurate and contemporaneous reports of legal proceedings held in public.

Textual Amendments

F22 Words in s. 25(4)(a) inserted (6.4.2013) by The Trafficking People for Exploitation Regulations 2013 (S.I. 2013/554), reg. 1(b), **Sch. para. 3**

F23 Words in s. 25(4)(a) substituted (31.7.2015) by Modern Slavery Act 2015 (c. 30), **ss. 46(3)**, 61(1); S.I. 2015/1476, reg. 2(e) (with regs. 3, 6, 8)

Modifications etc. (not altering text)

C16 S. 25(1)-(3) applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **3**, 4

C17 S. 25(4) applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **3**, 4

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C18 S. 25(5) applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **3**, 4

Commencement Information

I10 S. 25 wholly in force at 24.7.2002; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 25 jn force in so far as not already in force at 24.7.2002 by S.I. 2002/1739, **art. 2(a)**

26 Removal of wigs and gowns.

A special measures direction may provide for the wearing of wigs or gowns to be dispensed with during the giving of the witness's evidence.

Modifications etc. (not altering text)

C19 S. 26 applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **3**, 4

Commencement Information

I11 S. 26 wholly in force at 24.7.2002; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 26 in force in so far as not already in force at 24.7.2002 by S.I. 2002/1739, **art. 2(a)**

27 Video recorded evidence in chief.

(1) A special measures direction may provide for a video recording of an interview of the witness to be admitted as evidence in chief of the witness.

(2) A special measures direction may, however, not provide for a video recording, or a part of such a recording, to be admitted under this section if the court is of the opinion, having regard to all the circumstances of the case, that in the interests of justice the recording, or that part of it, should not be so admitted.

(3) In considering for the purposes of subsection (2) whether any part of a recording should not be admitted under this section, the court must consider whether any prejudice to the accused which might result from that part being so admitted is outweighed by the desirability of showing the whole, or substantially the whole, of the recorded interview.

(4) Where a special measures direction provides for a recording to be admitted under this section, the court may nevertheless subsequently direct that it is not to be so admitted if—

(a) it appears to the court that—

(i) the witness will not be available for cross-examination (whether conducted in the ordinary way or in accordance with any such direction), and

(ii) the parties to the proceedings have not agreed that there is no need for the witness to be so available; or

(b) any **[**[F24]Criminal Procedure Rules**]** requiring disclosure of the circumstances in which the recording was made have not been complied with to the satisfaction of the court.

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Changes to legislation: *Youth Justice and Criminal Evidence Act 1999, Part II is up to date with all changes known to be in force on or before 03 June 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)*

(5) Where a recording is admitted under this section—

(a) the witness must be called by the party tendering it in evidence, unless—

(i) a special measures direction provides for the witness's evidence on cross-examination to be given **[**[F25]in any recording admissible under section 28**]**, or

(ii) the parties to the proceedings have agreed as mentioned in subsection (4)(a)(ii); and

[[F26](b) the witness may not without the permission of the court give evidence in chief otherwise than by means of the recording as to any matter which, in the opinion of the court, is dealt with in the witness's recorded testimony.**]**

(6) Where in accordance with subsection (2) a special measures direction provides for part only of a recording to be admitted under this section, references in subsections (4) and (5) to the recording or to the witness's recorded testimony are references to the part of the recording or testimony which is to be so admitted.

(7) The court may give permission for the purposes of subsection **[**[F27]subsection (5)(b)**]** if it appears to the court to be in the interests of justice to do so, and may do so either—

(a) on an application by a party to the proceedings, [F28]... or

(b) of its own motion.

[F29](8) . . . . . .

(9) The court may, in giving permission for the purposes of **[**[F30]subsection (5)(b)**]**, direct that the evidence in question is to be given by the witness by means of a live link; [F31]....

[[F32](9A) If the court directs under subsection (9) that evidence is to be given by live link, it may also make such provision in that direction as it could make under section 24(1A) in a special measures direction.**]**

[F33]**[**(10) A magistrates' court inquiring into an offence as examining justices under section 6 of the [M2]Magistrates' Courts Act 1980 may consider any video recording in relation to which it is proposed to apply for a special measures direction providing for it to be admitted at the trial in accordance with this section.**]**

(11) Nothing in this section affects the admissibility of any video recording which would be admissible apart from this section.

Textual Amendments

F24 Words in s. 27(4)(b) substituted (1.9.2004) by Courts Act 2003 (c. 39), s. 110(1), **Sch. 8 para. 384(b)**; S.I. 2004/2066, art. 2(c)(xix) (with art. 3)

F25 Words in s. 27(5)(a)(i) substituted (27.6.2011) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 21 para. 73** (with s. 180); S.I. 2011/1452, art. 2(g)

F26 S. 27(5)(b) substituted (27.6.2011) by Coroners and Justice Act 2009 (c. 25), **ss. 103(2)**, 182(5) (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)

F27 Words in s. 27(7) substituted (27.6.2011) by Coroners and Justice Act 2009 (c. 25), **ss. 103(3)(a)**, 182(5) (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)

F28 Words in s. 27(7)(a) repealed (27.6.2011) by Coroners and Justice Act 2009 (c. 25), ss. 103(3)(b), 182(5), **Sch. 23 Pt. 3** (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)(i)

F29 S. 27(8) repealed (27.6.2011) by Coroners and Justice Act 2009 (c. 25), ss. 103(4), 182(5), **Sch. 23 Pt. 3** (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)(i)

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F30 Words in s. 27(9) substituted (27.6.2011) by Coroners and Justice Act 2009 (c. 25), **ss. 103(5)**, 182(5) (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)

F31 Words in s. 27(9) repealed (27.6.2011) by Coroners and Justice Act 2009 (c. 25), s. 182(5), **Sch. 23 Pt. 3** (with s. 180); S.I. 2011/1452, art. 2(i)

F32 S. 27(9A) inserted (27.6.2011) by Coroners and Justice Act 2009 (c. 25), **ss. 102(2)**, 182(5) (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)

F33 S. 27(10) repealed (18.6.2012 for specified purposes, 5.11.2012 for specified purposes, 28.5.2013 for specified purposes) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), Sch. 3 para. 73(2), **Sch. 37 Pt. 4**; S.I. 2012/1320, art. 4(1)(c)(d)(2)(3) (with art. 5) (see S.I. 2012/2574, art. 4(2) and S.I. 2013/1103, art. 4); S.I. 2012/2574, art. 2(2)(3)(c)(d), Sch. (with arts. 3, 4) (as amended (4.11.2012) by S.I. 2012/2761, art. 2) (with S.I. 2013/1103, art. 4); S.I. 2013/1103, art. 2(1)(c)(d)(2)(3) (with arts. 3, 4)

Modifications etc. (not altering text)

C20 S. 27(1) applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **3**, 4

C21 S. 27(2)-(9) applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **3**, 4

C22 S. 27(11) applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **3**, 4

Commencement Information

I12 S. 27 wholly in force at 24.7.2002; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 27 in force in so far as not already in force at 24.7.2002 by S.I. 2002/1739, **art. 2(a)**

Marginal Citations

M2 1980 c. 43.

28 Video recorded cross-examination or re-examination.

(1) Where a special measures direction provides for a video recording to be admitted under section 27 as evidence in chief of the witness, the direction may also provide—

(a) for any cross-examination of the witness, and any re-examination, to be recorded by means of a video recording; and

(b) for such a recording to be admitted, so far as it relates to any such cross-examination or re-examination, as evidence of the witness under cross-examination or on re-examination, as the case may be.

(2) Such a recording must be made in the presence of such persons as **[**[F34]Criminal Procedure Rules**]** or the direction may provide and in the absence of the accused, but 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 witness and to communicate with the persons in whose presence the recording is being made, and

(b) the accused is able to see and hear any such examination and to communicate with any legal representative acting for him.

(3) Where two or more legal representatives are acting for a party to the proceedings, subsection (2)(a) and (b) are to be regarded as satisfied in relation to those representatives if at all material times they are satisfied in relation to at least one of them.

(4) Where a special measures direction provides for a recording to be admitted under this section, the court may nevertheless subsequently direct that it is not to be so admitted if any requirement of subsection (2) or **[**[F35]Criminal Procedure Rules**]** or the direction has not been complied with to the satisfaction of the court.

(5) Where in pursuance of subsection (1) a recording has been made of any examination of the witness, the witness may not be subsequently cross-examined or re-examined in respect of any evidence given by the witness in the proceedings (whether in any recording admissible under section 27 or this section or otherwise than in such a recording) unless the court gives a further special measures direction making such provision as is mentioned in subsection (1)(a) and (b) in relation to any subsequent cross-examination, and re-examination, of the witness.

(6) The court may only give such a further direction if it appears to the court—

(a) that the proposed cross-examination is sought by a party to the proceedings as a result of that party having become aware, since the time when the original recording was made in pursuance of subsection (1), of a matter which that party could not with reasonable diligence have ascertained by then, or

(b) that for any other reason it is in the interests of justice to give the further direction.

(7) Nothing in this section shall be read as applying in relation to any cross-examination of the witness by the accused in person (in a case where the accused is to be able to conduct any such cross-examination).

Textual Amendments

F34 Words in s. 28(2) substituted (1.9.2004) by Courts Act 2003 (c. 39), s. 110(1), **Sch. 8 para. 384(c)**; S.I. 2004/2066, art. 2(c)(xix) (with art. 3)

F35 Words in s. 28(4) substituted (1.9.2004) by Courts Act 2003 (c. 39), s. 110(1), **Sch. 8 para. 384(c)**; S.I. 2004/2066, art. 2(c)(xix) (with art. 3)

Commencement Information

I13 Pt. 2 Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4)

I14 S. 28 in force at 30.12.2013 for specified purposes by S.I. 2013/3236, **art. 2(1)**

I15 S. 28 in force at 2.1.2017 for specified purposes by S.I. 2016/1201, **art. 2**

I16 S. 28 in force at 3.6.2019 for specified purposes by S.I. 2019/947, **art. 2**

I17 S. 28 in force at 24.2.2020 for specified purposes by S.I. 2020/155, **art. 2**

I18 S. 28 in force at 24.8.2020 for specified purposes by S.I. 2020/888, **art. 2**

29 Examination of witness through intermediary.

(1) A special measures direction may provide for any examination of the witness (however and wherever conducted) to be conducted through an interpreter or other person approved by the court for the purposes of this section ("an intermediary").

(2) The function of an intermediary is to communicate—

(a) to the witness, questions put to the witness, and

(b) to any person asking such questions, the answers given by the witness in reply to them,

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and to explain such questions or answers so far as necessary to enable them to be understood by the witness or person in question.

(3) Any examination of the witness in pursuance of subsection (1) must take place in the presence of such persons as **[**[F36]Criminal Procedure Rules**]** or the direction may provide, but 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 witness and to communicate with the intermediary, and

(b) (except in the case of a video recorded examination) the jury (if there is one) are able to see and hear the examination of the witness.

(4) Where two or more legal representatives are acting for a party to the proceedings, subsection (3)(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.

(5) 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 **[**[F37]Criminal Procedure Rules**]**, that he will faithfully perform his function as intermediary.

(6) Subsection (1) does not apply to an interview of the witness which is recorded by means of a video recording with a view to its admission as evidence in chief of the witness; but a special measures direction may provide for such a recording to be admitted under section 27 if the interview was conducted through an intermediary and—

(a) that person complied with subsection (5) before the interview began, and

(b) the court's approval for the purposes of this section is given before the direction is given.

(7) Section 1 of the [M3]Perjury Act 1911 (perjury) shall apply 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; and for this purpose, where a person acts as an intermediary in any proceeding which is not a judicial proceeding for the purposes of that section, that proceeding shall be taken to be part of the judicial proceeding in which the witness's evidence is given.

Textual Amendments

F36 Words in s. 29(3) substituted (1.9.2004) by Courts Act 2003 (c. 39), s. 110(1), **Sch. 8 para. 384(d)**; S.I. 2004/2066, art. 2(c)(xix) (with art. 3)

F37 Words in s. 29(5) substituted (1.9.2004) by Courts Act 2003 (c. 39), s. 110(1), **Sch. 8 para. 384(d)**; S.I. 2004/2066, art. 2(c)(xix) (with art. 3)

Modifications etc. (not altering text)

C23 S. 29(1)(2) applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **3**, 4

C24 S. 29(3)(4) applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **3**, 4

C25 S. 29(5)-(7) applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **3**, 4

Commencement Information

I19 Pt. 2 Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4)

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I20 S. 29 in force at 23.2.2004 in so far as not already in force by S.I. 2004/299, **art. 2**

Marginal Citations

M3 1911 c. 6.

30 Aids to communication.

A special measures direction may provide for the witness, while giving evidence (whether by testimony in court or otherwise), to be provided with such device as the court considers appropriate with a view to enabling questions or answers to be communicated to or by the witness despite any disability or disorder or other impairment which the witness has or suffers from.

Modifications etc. (not altering text)

C26 S. 30 applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **3**, 4

Commencement Information

I21 S. 30 wholly in force at 24.7.2002; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 30 in force in so far as not already in force at 24.7.2002 by S.I. 2002/1739, **art. 2(a)**

Supplementary

31 Status of evidence given under Chapter I.

(1) Subsections (2) to (4) apply to a statement made by a witness in criminal proceedings which, in accordance with a special measures direction, is not made by the witness in direct oral testimony in court but forms part of the witness's evidence in those proceedings.

(2) The statement shall be treated as if made by the witness in direct oral testimony in court; and accordingly—

(a) it is admissible evidence of any fact of which such testimony from the witness would be admissible;

(b) it is not capable of corroborating any other evidence given by the witness.

(3) Subsection (2) applies to a statement admitted under section 27 or 28 which is not made by the witness on oath even though it would have been required to be made on oath if made by the witness in direct oral testimony in court.

(4) In estimating the weight (if any) to be attached to the statement, the court must have regard to all the circumstances from which an inference can reasonably be drawn (as to the accuracy of the statement or otherwise).

(5) Nothing in this Chapter (apart from subsection (3)) affects the operation of any rule of law relating to evidence in criminal proceedings.

(6) Where any statement made by a person on oath in any proceeding which is not a judicial proceeding for the purposes of section 1 of the [M4]Perjury Act 1911 (perjury) is received in evidence in pursuance of a special measures direction, that proceeding

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shall be taken for the purposes of that section to be part of the judicial proceeding in which the statement is so received in evidence.

(7) Where in any proceeding which is not a judicial proceeding for the purposes of that Act—

(a) a person wilfully makes a false statement otherwise than on oath which is subsequently received in evidence in pursuance of a special measures direction, and

(b) the statement is made in such circumstances that had it been given on oath in any such judicial proceeding that person would have been guilty of perjury,

he shall be guilty of an offence and liable to any punishment which might be imposed on conviction of an offence under section 57(2) (giving of false unsworn evidence in criminal proceedings).

(8) In this section "statement" includes any representation of fact, whether made in words or otherwise.

Modifications etc. (not altering text)

C27 S. 31 applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **3**, 4

Commencement Information

I22 S. 31 wholly in force at 24.7.2002; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 31 in force in so far as not already in force at 24.7.2002 by S.I. 2002/1739, **art. 2(b)**

Marginal Citations

M4 1911 c. 6.

32 Warning to jury.

Where on a trial on indictment **[**[F38]with a jury**]** evidence has been given in accordance with a special measures direction, the judge must give the jury such warning (if any) as the judge considers necessary to ensure that the fact that the direction was given in relation to the witness does not prejudice the accused.

Textual Amendments

F38 Words in s. 32 inserted (24.7.2006) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), **Sch. 36 para. 75**; S.I. 2006/1835, art. 2(h)

Commencement Information

I23 S. 32 wholly in force at 24.7.2002; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 32 in force in so far as not already in force at 24.7.2002 by S.I. 2002/1739, **art. 2(b)**

33 Interpretation etc. of Chapter I.

(1) In this Chapter—

"eligible witness" means a witness eligible for assistance by virtue of section 16 or 17;

"live link" has the meaning given by section 24(8);

"quality", in relation to the evidence of a witness, shall be construed in accordance with section 16(5);

"special measures direction" means (in accordance with section 19(5)) a direction under section 19.

(2) In this Chapter references to the special measures available in relation to a witness shall be construed in accordance with section 18.

(3) In this Chapter references to a person being able to see or hear, or be seen or heard by, another person are to be read as not applying to the extent that either of them is unable to see or hear by reason of any impairment of eyesight or hearing.

(4) In the case of any proceedings in which there is more than one accused—

(a) any reference to the accused in sections 23 to 28 may be taken by a court, in connection with the giving of a special measures direction, as a reference to all or any of the accused, as the court may determine, and

(b) any such direction may be given on the basis of any such determination.

[[F39](5) For the purposes of this Chapter as it applies in relation to a witness who is the complainant in respect of **[**[F40]a relevant offence**]**, where the age of the witness is uncertain and there are reasons to believe that the witness is under the age of 18, that witness is presumed to be under the age of 18.

[[F41](6) In subsection (5) "relevant offence" means—

(a) a sexual offence;

(b) an offence under section 1 of the Protection of Children Act 1978;

(c) an offence under section 160 of the Criminal Justice Act 1988;

(d) an offence under **[**[F42]section 1 or 2 of the Modern Slavery Act 2015**].]]**

Textual Amendments

F39 S. 33(5)(6) inserted (6.4.2013) by The Trafficking People for Exploitation Regulations 2013 (S.I. 2013/554), reg. 1(b), **Sch. para. 4** (with Sch. para. 6)

F40 Words in s. 33(5) substituted (18.12.2013) by The Special Measures for Child Witnesses (Sexual Offences) Regulations 2013 (S.I. 2013/2971), regs. 1(b), **2(a)**

F41 S. 33(6) substituted (18.12.2013) by The Special Measures for Child Witnesses (Sexual Offences) Regulations 2013 (S.I. 2013/2971), regs. 1(b), **2(b)**

F42 Words in s. 33(6)(d) substituted (31.7.2015) by Modern Slavery Act 2015 (c. 30), **ss. 46(4)**, 61(1); S.I. 2015/1476, reg. 2(e) (with regs. 3, 6, 8)

Modifications etc. (not altering text)

C28 S. 33 applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **3**, 4

Commencement Information

I24 S. 33 wholly in force at 24.7.2002; Pt.II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 33 in force in so far as not already in force at 24.7.2002 by S.I. 2002/1739 {art. 2(b)}

Status: *Point in time view as at 24/08/2020.*
Changes to legislation: *Youth Justice and Criminal Evidence Act 1999, Part II is up to date with all changes known to be in force on or before 03 June 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)*

[F43 CHAPTER 1A

USE OF LIVE LINK FOR EVIDENCE OF CERTAIN ACCUSED PERSONS

Textual Amendments

F43 Ch. 1A inserted (15.1.2007) by Police and Justice Act 2006 (c. 48), **ss. 47**, 53(1); S.I. 2006/3364, art. 2(h)

33A Live link directions

(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 live link direction if it is satisfied—

(a) that the conditions in subsection (4) or, as the case may be, subsection (5) are met in relation to the accused, and

(b) that it is in the interests of justice for the accused to give evidence through a live link.

(3) A live link direction is a direction that any oral evidence to be given before the court by the accused is to be given through a live link.

(4) Where the accused is aged under 18 when the application is made, the conditions are that—

(a) his ability to participate effectively in the proceedings as a witness giving oral evidence in court is compromised by his level of intellectual ability or social functioning, and

(b) use of a live link would enable him to participate more effectively in the proceedings as a witness (whether by improving the quality of his evidence or otherwise).

(5) Where the accused has attained the age of 18 at that time, the conditions are that—

(a) he 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,

(b) he is for that reason unable to participate effectively in the proceedings as a witness giving oral evidence in court, and

(c) use of a live link would enable him to participate more effectively in the proceedings as a witness (whether by improving the quality of his evidence or otherwise).

(6) While a live link direction has effect the accused may not give oral evidence before the court in the proceedings otherwise than through a live link.

(7) The court may discharge a live link direction at any time before or during any hearing to which it applies if it appears to the court to be in the interests of justice to do so (but this does not affect the power to give a further live link direction in relation to the accused).

The court may exercise this power of its own motion or on an application by a party.

Status: *Point in time view as at 24/08/2020.*
Changes to legislation: *Youth Justice and Criminal Evidence Act 1999, Part II is up to date with all changes known to be in force on or before 03 June 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)*

(8) The court must state in open court its reasons for—

(a) giving or discharging a live link direction, or

(b) refusing an application for or for the discharge of a live link direction,

and, if it is a magistrates' court, it must cause those reasons to be entered in the register of its proceedings.

Modifications etc. (not altering text)

C29 Ss. 33A-33C applied (with modifications) (31.10.2009) by The Court Martial Appeal Court (Evidence) Order 2009 (S.I. 2009/2569), arts. 1, **4**

33B Section 33A: meaning of "live link"

(1) In section 33A "live link" means an arrangement by which the accused, while absent from the place where the proceedings are being held, is able—

(a) to see and hear a person there, and

(b) to be seen and heard by the persons mentioned in subsection (2),

and for this purpose any impairment of eyesight or hearing is to be disregarded.

(2) The persons are—

(a) the judge or justices (or both) and the jury (if there is one),

(b) where there are two or more accused in the proceedings, each of the other accused,

(c) legal representatives acting in the proceedings, and

(d) any interpreter or other person appointed by the court to assist the accused.

Modifications etc. (not altering text)

C29 Ss. 33A-33C applied (with modifications) (31.10.2009) by The Court Martial Appeal Court (Evidence) Order 2009 (S.I. 2009/2569), arts. 1, **4**

33C Saving

Nothing in this Chapter affects—

(a) any power of a court to make an order, give directions or give leave of any description in relation to any witness (including an accused), or

(b) the operation of any rule of law relating to evidence in criminal proceedings.**]**

Modifications etc. (not altering text)

C29 Ss. 33A-33C applied (with modifications) (31.10.2009) by The Court Martial Appeal Court (Evidence) Order 2009 (S.I. 2009/2569), arts. 1, **4**

Status: *Point in time view as at 24/08/2020.*
Changes to legislation: *Youth Justice and Criminal Evidence Act 1999, Part II is up to date with all changes known to be in force on or before 03 June 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)*

CHAPTER II

PROTECTION OF WITNESSES FROM CROSS-EXAMINATION BY ACCUSED IN PERSON

Modifications etc. (not altering text)

C30 Pt. II Chs. I-III amended (1.9.2001) by 2001 c. 17, **s. 57(2)** (with ss. 56(2), 63(2), 78); S.I. 2001/2161, **art. 2**

General prohibitions

34 Complainants in proceedings for sexual offences.

No person charged with a sexual offence may in any criminal proceedings cross-examine in person a witness who is the complainant, either—

(a) in connection with that offence, or

(b) in connection with any other offence (of whatever nature) with which that person is charged in the proceedings.

Modifications etc. (not altering text)

C31 S. 34 applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **5**, 6

Commencement Information

I25 S. 34 wholly in force at 4.9.2000; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 34 in force at 4.9.2000 by S.I. 2000/2091, **art. 2(a)**

35 Child complainants and other child witnesses.

(1) No person charged with an offence to which this section applies may in any criminal proceedings cross-examine in person a protected witness, either—

(a) in connection with that offence, or

(b) in connection with any other offence (of whatever nature) with which that person is charged in the proceedings.

(2) For the purposes of subsection (1) a "protected witness" is a witness who—

(a) either is the complainant or is alleged to have been a witness to the commission of the offence to which this section applies, and

(b) either is a child or falls to be cross-examined after giving evidence in chief (whether wholly or in part)—

(i) by means of a video recording made (for the purposes of section 27) at a time when the witness was a child, or

(ii) in any other way at any such time.

(3) The offences to which this section applies are—

(a) any offence under—

F44(i) . . . . . .

F44(ii) . . . . . .

[F44](iii) . . . . . .
[F44](iv) . . . . . .
[[F45](iva) any of sections 33 to 36 of the Sexual Offences Act 1956,**]**
(v) the [M5]Protection of Children Act 1978; [F46]...
[[F47](vi) Part 1 of the Sexual Offences Act 2003 **[**[F48]or any relevant superseded enactment**]**;**][**[F49]or**]**
[[F50](vii) sections 1 and 2 of the Modern Slavery Act 2015;**]**

(b) kidnapping, false imprisonment or an offence under section 1 or 2 of the [M6]Child Abduction Act 1984;

(c) any offence under section 1 of the [M7]Children and Young Persons Act 1933;

(d) any offence (not within any of the preceding paragraphs) which involves an assault on, or injury or a threat of injury to, any person.

[[F51](3A) In subsection (3)(a)(vi) "relevant superseded enactment" means—

(a) any of sections 1 to 32 of the Sexual Offences Act 1956;

(b) the Indecency with Children Act 1960;

(c) the Sexual Offences Act 1967;

(d) section 54 of the Criminal Law Act 1977.**]**

(4) In this section "child" means—

(a) where the offence falls within subsection (3)(a), a person under the age of **[**[F52]18**]**; or

(b) where the offence falls within subsection (3)(b), (c) or (d), a person under the age of 14.

(5) For the purposes of this section "witness" includes a witness who is charged with an offence in the proceedings.

Textual Amendments

F44 S. 35(3)(a)(i)-(iv) repealed (1.5.2004) by Sexual Offences Act 2003 (c. 42), s. 141, **Sch. 7**; S.I. 2004/874, art. 2

F45 S. 35(3)(a)(iva) inserted (retrospective to 1.5.2004) by Criminal Justice and Immigration Act 2008 (c. 4), **Sch. 26 paras. 36(2)(a)**, 38

F46 Word in s. 35(3)(a)(v) omitted (17.3.2016) by virtue of The Modern Slavery Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/244), regs. 1(1), **11(a)**

F47 S. 35(3)(a)(vi) and preceding word inserted (1.5.2004) by Sexual Offences Act 2003 (c. 42), s. 141, **Sch. 6 para. 41(2)**; S.I. 2004/874, art. 2

F48 Words in s. 35(3)(a)(vi) inserted (retrospective to 1.5.2004) by Criminal Justice and Immigration Act 2008 (c. 4), **Sch. 26 paras. 36(2)(b)**, 38

F49 Word in s. 35(3)(a)(vi) inserted (17.3.2016) by The Modern Slavery Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/244), regs. 1(1), **11(b)**

F50 S. 35(3)(a)(vii) inserted (17.3.2016) by The Modern Slavery Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/244), regs. 1(1), **11(c)**

F51 S. 35(3A) inserted (retrospective to 1.5.2004) by Criminal Justice and Immigration Act 2008 (c. 4), **Sch. 26 paras. 36(3)**, 38

F52 Word in s. 35(4)(a) substituted (27.6.2011) by Coroners and Justice Act 2009 (c. 25), **ss. 105**, 182(5) (with s. 180); S.I. 2011/1452, art. 2(b)

Status: *Point in time view as at 24/08/2020.*
Changes to legislation: *Youth Justice and Criminal Evidence Act 1999, Part II is up to date with all changes known to be in force on or before 03 June 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)*

Modifications etc. (not altering text)

C32 S. 35 applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **5**, 6

Commencement Information

I26 S. 35 wholly in force at 4.9.2000; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 35 in force at 4.9.2000 by S.I. 2000/2091, **art. 2(b)**

Marginal Citations

M5 1978 c. 37.
M6 1984 c. 37.
M7 1933 c. 12.

Prohibition imposed by court

36 Direction prohibiting accused from cross-examining particular witness.

(1) This section applies where, in a case where neither of sections 34 and 35 operates to prevent an accused in any criminal proceedings from cross-examining a witness in person—

(a) the prosecutor makes an application for the court to give a direction under this section in relation to the witness, or

(b) the court of its own motion raises the issue whether such a direction should be given.

(2) If it appears to the court—

(a) that the quality of evidence given by the witness on cross-examination—

(i) is likely to be diminished if the cross-examination (or further cross-examination) is conducted by the accused in person, and

(ii) would be likely to be improved if a direction were given under this section, and

(b) that it would not be contrary to the interests of justice to give such a direction,

the court may give a direction prohibiting the accused from cross-examining (or further cross-examining) the witness in person.

(3) In determining whether subsection (2)(a) applies in the case of a witness the court must have regard, in particular, to—

(a) any views expressed by the witness as to whether or not the witness is content to be cross-examined by the accused in person;

(b) the nature of the questions likely to be asked, having regard to the issues in the proceedings and the defence case advanced so far (if any);

(c) any behaviour on the part of the accused at any stage of the proceedings, both generally and in relation to the witness;

(d) any relationship (of whatever nature) between the witness and the accused;

(e) whether any person (other than the accused) is or has at any time been charged in the proceedings with a sexual offence or an offence to which section 35 applies, and (if so) whether section 34 or 35 operates or would have operated to prevent that person from cross-examining the witness in person;

(f) any direction under section 19 which the court has given, or proposes to give, in relation to the witness.

(4) For the purposes of this section—

(a) "witness", in relation to an accused, does not include any other person who is charged with an offence in the proceedings; and

(b) any reference to the quality of a witness's evidence shall be construed in accordance with section 16(5).

Modifications etc. (not altering text)

C33 S. 36 applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **5**, 6

Commencement Information

I27 S. 36 wholly in force at 24.7.2002; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 36 in force in so far as not already in force at 24.7.2002 by S.I. 2002/1739, **art. 2(c)**

37 Further provisions about directions under section 36.

(1) Subject to subsection (2), a direction has binding effect from the time it is made until the witness to whom it applies is discharged.

In this section "direction" means a direction under section 36.

(2) The court may discharge a direction if it appears to the court to be in the interests of justice to do so, and may do so either—

(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) of its own motion.

(3) In subsection (2) "the relevant time" means—

(a) the time when the direction was given, or

(b) if a previous application has been made under that subsection, the time when the application (or last application) was made.

(4) The court must state in open court its reasons for—

(a) giving, or

(b) refusing an application for, or for the discharge of, or

(c) discharging,

a direction and, if it is a magistrates' court, must cause them to be entered in the register of its proceedings.

(5) **[**[F53]Criminal Procedure Rules**]** may make provision—

(a) for uncontested applications to be determined by the court without a hearing;

(b) for preventing the renewal of an unsuccessful application for a direction except where there has been a material change of circumstances;

(c) for expert evidence to be given in connection with an application for, or for discharging, a direction;

Status: *Point in time view as at 24/08/2020.*
Changes to legislation: *Youth Justice and Criminal Evidence Act 1999, Part II is up to date with all changes known to be in force on or before 03 June 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)*

(d) for the manner in which confidential or sensitive information is to be treated in connection with such an application and in particular as to its being disclosed to, or withheld from, a party to the proceedings.

Textual Amendments

F53 Words in s. 37(5) substituted (1.9.2004) by Courts Act 2003 (c. 39), s. 110(1), **Sch. 8 para. 384(e)**; S.I. 2004/2066, art. 2(c)(xix) (with art. 3)

Modifications etc. (not altering text)

C34 S. 37 applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **5**, 6

Commencement Information

I28 S. 37 wholly in force at 24.7.2002; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 37 in force in so far as not already in force at 24.7.2002 by S.I. 2002/1739, **art. 2(c)**

Cross-examination on behalf of accused

38 Defence representation for purposes of cross-examination.

(1) This section applies where an accused is prevented from cross-examining a witness in person by virtue of section 34, 35 or 36.

(2) Where it appears to the court that this section applies, it must—

(a) invite the accused to arrange for a legal representative to act for him for the purpose of cross-examining the witness; and

(b) require the accused to notify the court, by the end of such period as it may specify, whether a legal representative is to act for him for that purpose.

(3) If by the end of the period mentioned in subsection (2)(b) either—

(a) the accused has notified the court that no legal representative is to act for him 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 legal representative is to so act,

the court must consider whether it is necessary in the interests of justice for the witness to be cross-examined by a legal representative appointed to represent the interests of the accused.

(4) If the court decides that it is necessary in the interests of justice for the witness to be so cross-examined, the court must appoint a qualified legal representative (chosen by the court) to cross-examine the witness in the interests of the accused.

(5) A person so appointed shall not be responsible to the accused.

(6) **[**[F54]Criminal Procedure Rules**]** may make provision—

(a) as to the time when, and the manner in which, subsection (2) is to be complied with;

(b) in connection with the appointment of a legal representative under subsection (4), and in particular for securing that a person so appointed is provided with evidence or other material relating to the proceedings.

(7) **[**[F54]Criminal Procedure Rules**]** made in pursuance of subsection (6)(b) may make provision for the application, with such modifications as are specified in the rules, of any of the provisions of—

(a) Part I of the [M8]Criminal Procedure and Investigations Act 1996 (disclosure of material in connection with criminal proceedings), or

(b) the [M9]Sexual Offences (Protected Material) Act 1997.

(8) For the purposes of this section—

(a) any reference to cross-examination includes (in a case where a direction is given under section 36 after the accused has begun cross-examining the witness) a reference to further cross-examination; and

(b) "qualified legal representative" means a legal representative who has a right of audience (within the meaning of the [M10]Courts and Legal Services Act 1990) in relation to the proceedings before the court.

Textual Amendments

F54 Words in s. 38(6)(7) substituted (1.9.2004) by Courts Act 2003 (c. 39), s. 110(1), **Sch. 8 para. 384(f)**; S.I. 2004/2066, art. 2(c)(xix) (with art. 3)

Modifications etc. (not altering text)

C35 S. 38 applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **5**, 6

Commencement Information

I29 S. 38 wholly in force at 4.9.2000; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 38 in force at 4.9.2000 by S.I. 2000/2091, **art. 2(c)**

Marginal Citations

M8 1996 c. 25.

M9 1997 c. 39.

M10 1990 c. 41.

39 Warning to jury.

(1) Where on a trial on indictment **[**[F55]with a jury**]** an accused is prevented from cross-examining a witness in person by virtue of section 34, 35 or 36, the judge must give the jury such warning (if any) as the judge considers necessary to ensure that the accused is not prejudiced—

(a) by any inferences that might be drawn from the fact that the accused has been prevented from cross-examining the witness in person;

(b) where the witness has been cross-examined by a legal representative appointed under section 38(4), by the fact that the cross-examination was carried out by such a legal representative and not by a person acting as the accused's own legal representative.

Status: *Point in time view as at 24/08/2020.*
Changes to legislation: *Youth Justice and Criminal Evidence Act 1999, Part II is up to date with all changes known to be in force on or before 03 June 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)*

(2) Subsection (8)(a) of section 38 applies for the purposes of this section as it applies for the purposes of section 38.

Textual Amendments

F55 Words in s. 39(1) inserted (24.7.2006) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), **Sch. 36 para. 76**; S.I. 2006/1835, art. 2(h)

Modifications etc. (not altering text)

C36 S. 39 applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **5**, 6

Commencement Information

I30 S. 39 wholly in force at 4.9.2000; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 39 in force at 4.9.2000 by S.I. 2000/2091, **art. 2(d)**

40 Funding of defence representation.

(1) In section 19(3) of the [M11]Prosecution of Offences Act 1985 (regulations authorising payments out of central funds), after paragraph (d) there shall be inserted—

"(e) to cover the proper fee or costs of a legal representative appointed under section 38(4) of the Youth Justice and Criminal Evidence Act 1999 (defence representation for purposes of cross-examination) and any expenses properly incurred in providing such a person with evidence or other material in connection with his appointment."

[F56](2) . . . . . .

Textual Amendments

F56 S. 40(2) repealed (2.4.2001) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 para. 7(2), 36(9)); S.I. 2001/916, **art. 3(b)** (with Sch. 2 para. 2)

Commencement Information

I31 S. 40 wholly in force at 4.9.2000; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes and s. 40(1) in force at Royal Assent, see s. 68(4)(b)(c); s. 40 in force at 4.9.2000 by S.I. 2000/2091, **art. 2(e)**

Marginal Citations

M11 1985 c. 23.

CHAPTER III

PROTECTION OF COMPLAINANTS IN PROCEEDINGS FOR SEXUAL OFFENCES

Modifications etc. (not altering text)

C37 Pt. II Chs. I-III amended (1.9.2001) by 2001 c. 17, **s. 57(2)** (with ss. 56(2), 63(2), 78); S.I. 2001/2161, **art. 2**

Status: *Point in time view as at 24/08/2020.*
Changes to legislation: *Youth Justice and Criminal Evidence Act 1999, Part II is up to date with all changes known to be in force on or before 03 June 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)*

41 Restriction on evidence or questions about complainant's sexual history.

(1) If at a trial a person is charged with a sexual offence, then, except with the leave of the court—

(a) no evidence may be adduced, and

(b) no question may be asked in cross-examination,

by or on behalf of any accused at the trial, about any sexual behaviour of the complainant.

(2) The court may give leave in relation to any evidence or question only on an application made by or on behalf of an accused, and may not give such leave unless it is satisfied—

(a) that subsection (3) or (5) applies, and

(b) that a refusal of leave might have the result of rendering unsafe a conclusion of the jury or (as the case may be) the court on any relevant issue in the case.

(3) This subsection applies if the evidence or question relates to a relevant issue in the case and either—

(a) that issue is not an issue of consent; or

(b) it is an issue of consent and the sexual behaviour of the complainant to which the evidence or question relates is alleged to have taken place at or about the same time as the event which is the subject matter of the charge against the accused; or

(c) it is an issue of consent and the sexual behaviour of the complainant to which the evidence or question relates is alleged to have been, in any respect, so similar—

(i) to any sexual behaviour of the complainant which (according to evidence adduced or to be adduced by or on behalf of the accused) took place as part of the event which is the subject matter of the charge against the accused, or

(ii) to any other sexual behaviour of the complainant which (according to such evidence) took place at or about the same time as that event,

that the similarity cannot reasonably be explained as a coincidence.

(4) For the purposes of subsection (3) no evidence or question shall be regarded as relating to a relevant issue in the case if it appears to the court to be reasonable to assume that the purpose (or main purpose) for which it would be adduced or asked is to establish or elicit material for impugning the credibility of the complainant as a witness.

(5) This subsection applies if the evidence or question—

(a) relates to any evidence adduced by the prosecution about any sexual behaviour of the complainant; and

(b) in the opinion of the court, would go no further than is necessary to enable the evidence adduced by the prosecution to be rebutted or explained by or on behalf of the accused.

(6) For the purposes of subsections (3) and (5) the evidence or question must relate to a specific instance (or specific instances) of alleged sexual behaviour on the part of the complainant (and accordingly nothing in those subsections is capable of applying in relation to the evidence or question to the extent that it does not so relate).

(7) Where this section applies in relation to a trial by virtue of the fact that one or more of a number of persons charged in the proceedings is or are charged with a sexual offence—

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(a) it shall cease to apply in relation to the trial if the prosecutor decides not to proceed with the case against that person or those persons in respect of that charge; but

(b) it shall not cease to do so in the event of that person or those persons pleading guilty to, or being convicted of, that charge.

(8) Nothing in this section authorises any evidence to be adduced or any question to be asked which cannot be adduced or asked apart from this section.

Modifications etc. (not altering text)

C38 S. 41 applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **7**, 8

Commencement Information

I32 S. 41 wholly in force at 4.12.2000; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 41 in force at 4.12.2000 in so far as not already in force by S.I. 2000/3075, **art. 2(a)**

42 Interpretation and application of section 41.

(1) In section 41—

(a) "relevant issue in the case" means any issue falling to be proved by the prosecution or defence in the trial of the accused;

(b) "issue of consent" means any issue whether the complainant in fact consented to the conduct constituting the offence with which the accused is charged (and accordingly does not include any issue as to the belief of the accused that the complainant so consented);

(c) "sexual behaviour" means any sexual behaviour or other sexual experience, whether or not involving any accused or other person, but excluding (except in section 41(3)(c)(i) and (5)(a)) anything alleged to have taken place as part of the event which is the subject matter of the charge against the accused; and

(d) subject to any order made under subsection (2), "sexual offence" shall be construed in accordance with section 62.

(2) The Secretary of State may by order make such provision as he considers appropriate for adding or removing, for the purposes of section 41, any offence to or from the offences which are sexual offences for the purposes of this Act by virtue of section 62.

(3) Section 41 applies in relation to the following proceedings as it applies to a trial, namely—

[F57][(a) proceedings before a magistrates' court inquiring into an offence as examining justices,]

[F58][(b) the hearing of an application under paragraph 5(1) of Schedule 6 to the [M12]Criminal Justice Act 1991 (application to dismiss charge following notice of transfer of case to Crown Court),]

(c) the hearing of an application under paragraph 2(1) of Schedule 3 to the [M13]Crime and Disorder Act 1998 (application to dismiss charge by person sent for trial under section 51 [[F59]or 51A] of that Act),

(d) any hearing held, between conviction and sentencing, for the purpose of determining matters relevant to the court's decision as to how the accused is to be dealt with, and

(e) the hearing of an appeal,

and references (in section 41 or this section) to a person charged with an offence accordingly include a person convicted of an offence.

Textual Amendments

F57 S. 42(3)(a) repealed (18.6.2012 for specified purposes, 5.11.2012 for specified purposes, 28.5.2013 for specified purposes) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), Sch. 3 para. 73(3)(a), **Sch. 37 Pt. 4**; S.I. 2012/1320, art. 4(1)(c)(d)(2)(3) (with art. 5) (see S.I. 2012/2574, art. 4(2) and S.I. 2013/1103, art. 4); S.I. 2012/2574, art. 2(2)(3)(c)(d), Sch. (with arts. 3, 4) (as amended (4.11.2012) by S.I. 2012/2761, art. 2) (with S.I. 2013/1103, art. 4); S.I. 2013/1103, art. 2(1)(c)(d)(2)(3) (with arts. 3, 4)

F58 S. 42(3)(b) repealed (18.6.2012 for specified purposes, 5.11.2012 for specified purposes, 28.5.2013 for specified purposes) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), Sch. 3 para. 73(3)(a), **Sch. 37 Pt. 4**; S.I. 2012/1320, art. 4(1)(c)(d)(2)(3) (with art. 5) (see S.I. 2012/2574, art. 4(2) and S.I. 2013/1103, art. 4); S.I. 2012/2574, art. 2(2)(3)(c)(d), Sch. (with arts. 3, 4) (as amended (4.11.2012) by S.I. 2012/2761, art. 2) (with S.I. 2013/1103, art. 4); S.I. 2013/1103, art. 2(1)(c)(d)(2)(3) (with arts. 3, 4)

F59 Words in s. 42(3)(c) inserted (9.5.2005 for specified purposes, 18.6.2012 for specified purposes, 5.11.2012 for specified purposes, 28.5.2013 for specified purposes) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), **Sch. 3 para. 73(3)(b)**; S.I. 2005/1267, art. 2(1)(2)(b), Sch. Pt. 2; S.I. 2012/1320, art. 4(1)(c)(2)(3) (with art. 5) (see S.I. 2012/2574, art. 4(2) and S.I. 2013/1103, art. 4); S.I. 2012/2574, art. 2(2)(3)(c), Sch. (with arts. 3, 4) (as amended (4.11.2012) by S.I. 2012/2761, art. 2) (with S.I. 2013/1103, art. 4); S.I. 2013/1103, art. 2(1)(c)(2)(3) (with arts. 3, 4)

Modifications etc. (not altering text)

C39 S. 42(1) applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **7**, 8

C40 S. 42(3) applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **7**, 8

Commencement Information

I33 S. 42 wholly in force at 4.12.2000; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 42 in force at 4.12.2000 in so far as not already in force by S.I. 2000/3075, **art. 2(a)**

Marginal Citations

M12 1991 c. 53.

M13 1998 c. 37.

43 Procedure on applications under section 41.

(1) An application for leave shall be heard in private and in the absence of the complainant.

In this section "leave" means leave under section 41.

(2) Where such an application has been determined, the court must state in open court (but in the absence of the jury, if there is one)—

(a) its reasons for giving, or refusing, leave, and

(b) if it gives leave, the extent to which evidence may be adduced or questions asked in pursuance of the leave,

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and, if it is a magistrates' court, must cause those matters to be entered in the register of its proceedings.

(3) **[**[F60]Criminal Procedure Rules**]** may make provision—

(a) requiring applications for leave to specify, in relation to each item of evidence or question to which they relate, particulars of the grounds on which it is asserted that leave should be given by virtue of subsection (3) or (5) of section 41;

(b) enabling the court to request a party to the proceedings to provide the court with information which it considers would assist it in determining an application for leave;

(c) for the manner in which confidential or sensitive information is to be treated in connection with such an application, and in particular as to its being disclosed to, or withheld from, parties to the proceedings.

Textual Amendments

F60 Words in s. 43(3) substituted (1.9.2004) by Courts Act 2003 (c. 39), s. 110(1), **Sch. 8 para. 384(g)**; S.I. 2004/2066, art. 2(c)(xix) (with art. 3)

Modifications etc. (not altering text)

C41 S. 43 applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **7**, 8

Commencement Information

I34 S. 43 wholly in force at 4.12.2000; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 43 in force at 4.12.2000 in so far as not already in force by S.I. 2000/3075, **art. 2(a)**

CHAPTER IV

REPORTING RESTRICTIONS

Modifications etc. (not altering text)

C42 Pt. II Ch. IV modified (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **13**

Reports relating to persons under 18

44 Restrictions on reporting alleged offences involving persons under 18.

(1) This section applies (subject to subsection (3)) where a criminal investigation has begun in respect of—

(a) an alleged offence against the law of—

(i) England and Wales, or

(ii) Northern Ireland; or

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(b) an alleged civil offence (other than an offence falling within paragraph (a)) committed (whether or not in the United Kingdom) by a person subject to service law.

(2) No matter relating to any person involved in the offence shall while he is under the age of 18 be included in any publication if it is likely to lead members of the public to identify him as a person involved in the offence.

(3) The restrictions imposed by subsection (2) cease to apply once there are proceedings in a court (whether a court in England and Wales, a service court or a court in Northern Ireland) in respect of the offence.

(4) For the purposes of subsection (2) any reference to a person involved in the offence is to—

(a) a person by whom the offence is alleged to have been committed; or

(b) if this paragraph applies to the publication in question by virtue of subsection (5)—

(i) a person against or in respect of whom the offence is alleged to have been committed, or

(ii) a person who is alleged to have been a witness to the commission of the offence;

except that paragraph (b)(i) does not include a person in relation to whom section 1 of the [M14]Sexual Offences (Amendment) Act 1992 (anonymity of victims of certain sexual offences) applies in connection with the offence.

(5) Subsection (4)(b) applies to a publication if—

(a) where it is a relevant programme, it is transmitted, or

(b) in the case of any other publication, it is published,

on or after such date as may be specified in an order made by the Secretary of State.

[[F61](5A) In the application of this section to Northern Ireland, the reference in subsection (5) to the Secretary of State shall be construed as a reference to the Department of Justice in Northern Ireland.**]**

(6) The matters relating to a person in relation to which the restrictions imposed by subsection (2) apply (if their inclusion in any publication is likely to have the result mentioned in that subsection) include in particular—

(a) his name,

(b) his address,

(c) the identity of any school or other educational establishment attended by him,

(d) the identity of any place of work, and

(e) any still or moving picture of him.

(7) Any appropriate criminal court may by order dispense, to any extent specified in the order, with the restrictions imposed by subsection (2) in relation to a person if it is satisfied that it is necessary in the interests of justice to do so.

(8) However, when deciding whether to make such an order dispensing (to any extent) with the restrictions imposed by subsection (2) in relation to a person, the court shall have regard to the welfare of that person.

(9) In subsection (7) "appropriate criminal court" means—

(a) in a case where this section applies by virtue of subsection (1)(a)(i) or (ii), any court in England and Wales or (as the case may be) in Northern Ireland which has any jurisdiction in, or in relation to, any criminal proceedings (but not a service court unless the offence is alleged to have been committed by a person subject to service law);

(b) in a case where this section applies by virtue of subsection (1)(b), any court falling within paragraph (a) or a service court.

(10) The power under subsection (7) of a magistrates' court in England and Wales may be exercised by a single justice.

(11) In the case of a decision of a magistrates' court in England and Wales, or a court of summary jurisdiction in Northern Ireland, to make or refuse to make an order under subsection (7), the following persons, namely—

(a) any person who was a party to the proceedings on the application for the order, and

(b) with the leave of the Crown Court**[**[F62], or in Northern Ireland a county court**]**, any other person,

may, in accordance with **[**[F63]Criminal Procedure Rules in England and Wales, or rules of court in Northern Ireland**]**, appeal to the Crown Court**[**[F62], or in Northern Ireland a county court,**]** against that decision or appear or be represented at the hearing of such an appeal.

(12) On such an appeal the Crown Court **[**[F64]or in Northern Ireland a county court**]**—

(a) may make such order as is necessary to give effect to its determination of the appeal; and

(b) may also make such incidental or consequential orders as appear to it to be just.

(13) In this section—

(a) "civil offence" means an act or omission which, if committed in England and Wales, would be an offence against the law of England and Wales;

(b) any reference to a criminal investigation, in relation to an alleged offence, is to an investigation conducted by police officers, or other persons charged with the duty of investigating offences, with a view to it being ascertained whether a person should be charged with the offence;

(c) any reference to a person subject to service law is to—

[[F65](i) a person subject to service law within the meaning of the Armed Forces Act 2006; or

(ii) a civilian subject to service discipline within the meaning of that Act.**]**

Textual Amendments

F61 S. 44(5A) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), **Sch. 14 para. 43** (with arts. 28-31)

F62 Words in s. 44(11) inserted (N.I.) (28.7.2003) by The Criminal Justice (Northern Ireland) Order 2003 (S.I. 2003/1247), art. 1(3), **Sch. 1 para. 23(a)**; S.R. 2003/352, art. 2(d)

F63 Words in s. 44(11) substituted (1.9.2004) by Courts Act 2003 (c. 39), s. 110(1), **Sch. 8 para. 386**; S.I. 2004/2066, art. 2(c)(xix) (with art. 3)

F64 Words in s. 44(12) inserted (N.I.) (28.7.2003) by The Criminal Justice (Northern Ireland) Order 2003 (S.I. 2003/1247), art. 1(3), **Sch. 1 para. 23(b)**; S.R. 2003/352, art. 2(d)

F65 S. 44(13)(c)(i)(ii) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by Armed Forces Act 2006 (c. 52), s. 383(2), **Sch. 16 para. 158**; S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4

Modifications etc. (not altering text)

C43 S. 44(1)(b) modified (24.4.2009 for specified purposes, 31.10.2009 in so far as not already in force) by The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (S.I. 2009/1059), art. 1(3), **Sch. 1 para. 44(1)**

C44 S. 44(9) modified (24.4.2009 for specified purposes, 31.10.2009 in so far as not already in force) by The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (S.I. 2009/1059), art. 1(3), **Sch. 1 para. 44(1)**

Commencement Information

I35 Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4)

Marginal Citations

M14 1992 c. 34.

45 Power to restrict reporting of criminal proceedings involving persons under 18.

(1) This section applies (subject to subsection (2)) in relation to—

(a) any criminal proceedings in any court (other than a service court) in England and Wales or Northern Ireland; and

(b) any proceedings (whether in the United Kingdom or elsewhere) in any service court.

(2) This section does not apply in relation to any proceedings to which section 49 of the [M15]Children and Young Persons Act 1933 applies.

(3) The court may direct that no matter relating to any person concerned in the proceedings shall while he is under the age of 18 be included in any publication if it is likely to lead members of the public to identify him as a person concerned in the proceedings.

(4) The court or an appellate court may by direction ("an excepting direction") dispense, to any extent specified in the excepting direction, with the restrictions imposed by a direction under subsection (3) if it is satisfied that it is necessary in the interests of justice to do so.

(5) The court or an appellate court may also by direction ("an excepting direction") dispense, to any extent specified in the excepting direction, with the restrictions imposed by a direction under subsection (3) if it is satisfied—

(a) that their effect is to impose a substantial and unreasonable restriction on the reporting of the proceedings, and

(b) that it is in the public interest to remove or relax that restriction;

but no excepting direction shall be given under this subsection by reason only of the fact that the proceedings have been determined in any way or have been abandoned.

(6) When deciding whether to make—

(a) a direction under subsection (3) in relation to a person, or

(b) an excepting direction under subsection (4) or (5) by virtue of which the restrictions imposed by a direction under subsection (3) would be dispensed with (to any extent) in relation to a person,

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the court or (as the case may be) the appellate court shall have regard to the welfare of that person.

(7) For the purposes of subsection (3) any reference to a person concerned in the proceedings is to a person—
  (a) against or in respect of whom the proceedings are taken, or
  (b) who is a witness in the proceedings.

(8) The matters relating to a person in relation to which the restrictions imposed by a direction under subsection (3) apply (if their inclusion in any publication is likely to have the result mentioned in that subsection) include in particular—
  (a) his name,
  (b) his address,
  (c) the identity of any school or other educational establishment attended by him,
  (d) the identity of any place of work, and
  (e) any still or moving picture of him.

(9) A direction under subsection (3) may be revoked by the court or an appellate court.

(10) An excepting direction—
  (a) may be given at the time the direction under subsection (3) is given or subsequently; and
  (b) may be varied or revoked by the court or an appellate court.

(11) In this section "appellate court", in relation to any proceedings in a court, means a court dealing with an appeal (including an appeal by way of case stated) arising out of the proceedings or with any further appeal.

Modifications etc. (not altering text)

C45 S. 45 applied (E.W.) (31.8.2009 for specified purposes, 1.4.2010 for specified purposes, 1.11.2010 for specified purposes) by Violent Crime Reduction Act 2006 (c. 38), **ss. 11(8)(b)**, 66(2); S.I. 2009/1840, art. 3(c); S.I. 2010/469, arts. 3(c), 4, **Schs.**; S.I. 2010/2541, arts. 3(c), 4, **Schs.**

C46 S. 45 applied (E.W.) (20.10.2014) by Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), **ss. 30(5)(b)**, 185(1) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/2590, art. 3(a)

Commencement Information

I36 Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4)

I37 S. 45 in force at 13.4.2015 for E.W. in so far as not already in force by S.I. 2015/818, **art. 2(a)**

Marginal Citations

M15 1933 c. 12.

[F66 45A Power to restrict reporting of criminal proceedings for lifetime of witnesses and victims under 18

(1) This section applies in relation to—
  (a) any criminal proceedings in any court (other than a service court) in England and Wales, and
  (b) any proceedings (whether in the United Kingdom or elsewhere) in any service court.

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(2) The court may make a direction ("a reporting direction") that no matter relating to a person mentioned in subsection (3) shall during that person's lifetime be included in any publication if it is likely to lead members of the public to identify that person as being concerned in the proceedings.

(3) A reporting direction may be made only in respect of a person who is under the age of 18 when the proceedings commence and who is—
- (a) a witness, other than an accused, in the proceedings;
- (b) a person against whom the offence, which is the subject of the proceedings, is alleged to have been committed.

(4) For the purposes of subsection (2), matters relating to a person in respect of whom the reporting direction is made include—
- (a) the person's name,
- (b) the person's address,
- (c) the identity of any school or other educational establishment attended by the person,
- (d) the identity of any place of work of the person, and
- (e) any still or moving picture of the person.

(5) The court may make a reporting direction in respect of a person only if it is satisfied that—
- (a) the quality of any evidence given by the person, or
- (b) the level of co-operation given by the person to any party to the proceedings in connection with that party's preparation of its case,

is likely to be diminished by reason of fear or distress on the part of the person in connection with being identified by members of the public as a person concerned in the proceedings.

(6) In determining whether subsection (5) is satisfied, the court must in particular take into account—
- (a) the nature and alleged circumstances of the offence to which the proceedings relate;
- (b) the age of the person;
- (c) such of the following as appear to the court to be relevant—
  - (i) the social and cultural background and ethnic origins of the person,
  - (ii) the domestic, educational and employment circumstances of the person, and
  - (iii) any religious beliefs or political opinions of the person;
- (d) any behaviour towards the person on the part of—
  - (i) an accused,
  - (ii) members of the family or associates of an accused, or
  - (iii) any other person who is likely to be an accused or a witness in the proceedings.

(7) In determining that question the court must in addition consider any views expressed—
- (a) by the person in respect of whom the reporting restriction may be made, and
- (b) where that person is under the age of 16, by an appropriate person other than an accused.

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(8) In determining whether to make a reporting direction in respect of a person, the court must have regard to—
- (a) the welfare of that person,
- (b) whether it would be in the interests of justice to make the direction, and
- (c) the public interest in avoiding the imposition of a substantial and unreasonable restriction on the reporting of the proceedings.

(9) A reporting direction may be revoked by the court or an appellate court.

(10) The court or an appellate court may by direction ("an excepting direction") dispense, to any extent specified in the excepting direction, with the restrictions imposed by a reporting direction.

(11) The court or an appellate court may only make an excepting direction if—
- (a) it is satisfied that it is necessary in the interests of justice to do so, or
- (b) it is satisfied that—
  - (i) the effect of the reporting direction is to impose a substantial and unreasonable restriction on the reporting of the proceedings, and
  - (ii) it is in the public interest to remove or relax that restriction.

(12) No excepting direction shall be given under subsection (11)(b) by reason only of the fact that the proceedings have been determined in any way or have been abandoned.

(13) In determining whether to make an excepting direction in respect of a person, the court or the appellate court must have regard to the welfare of that person.

(14) An excepting direction—
- (a) may be given at the time the reporting direction is given or subsequently, and
- (b) may be varied or revoked by the court or an appellate court.

(15) For the purposes of this section—
- (a) criminal proceedings in a court other than a service court commence when proceedings are instituted for the purposes of Part 1 of the Prosecution of Offences Act 1985, in accordance with section 15(2) of that Act;
- (b) proceedings in a service court commence when the charge is brought under **[**[F67]section 121(1A) or 122**]** of the Armed Forces Act 2006.

(16) In this section—
- (a) "appellate court", in relation to any proceedings in a court, means a court dealing with an appeal (including an appeal by way of case stated) arising out of the proceedings or with any further appeal;
- (b) "appropriate person" has the same meaning as in section 50;
- (c) references to the quality of evidence given by a person are to its quality in terms of completeness, coherence and accuracy (and for this purpose "coherence" refers to a person's ability in giving evidence to give answers which address the questions put to the person and can be understood both individually and collectively);
- (d) references to the preparation of the case of a party to any proceedings include, where the party is the prosecution, the carrying out of investigations into any offence at any time charged in the proceedings.**]**

Textual Amendments

F66 S. 45A inserted (13.4.2015) by Criminal Justice and Courts Act 2015 (c. 2), **ss. 78(2)**, 95(1); S.I. 2015/778, art. 3, Sch. 1 para. 63

F67 Words in s. 45A(15)(b) substituted (22.5.2019 for specified purposes, 1.7.2019 in so far as not already in force) by Armed Forces Act 2016 (c. 21), **ss. 5(3)(a)**, 19(1); S.I. 2019/961, reg. 2(1)(a)(b) (with reg. 3)

Reports relating to adult witnesses

46 Power to restrict reports about certain adult witnesses in criminal proceedings.

(1) This section applies where—

(a) in any criminal proceedings in any court (other than a service court) in England and Wales or Northern Ireland, or

(b) in any proceedings (whether in the United Kingdom or elsewhere) in any service court,

a party to the proceedings makes an application for the court to give a reporting direction in relation to a witness in the proceedings (other than the accused) who has attained the age of 18.

In this section "reporting direction" has the meaning given by subsection (6).

(2) If the court determines—

(a) that the witness is eligible for protection, and

(b) that giving a reporting direction in relation to the witness is likely to improve—

(i) the quality of evidence given by the witness, or

(ii) the level of co-operation given by the witness to any party to the proceedings in connection with that party's preparation of its case,

the court may give a reporting direction in relation to the witness.

(3) For the purposes of this section a witness is eligible for protection if the court is satisfied—

(a) that the quality of evidence given by the witness, or

(b) the level of co-operation given by the witness to any party to the proceedings in connection with that party's preparation of its case,

is likely to be diminished by reason of fear or distress on the part of the witness in connection with being identified by members of the public as a witness in the proceedings.

(4) In determining whether a witness is eligible for protection the court must take into account, in particular—

(a) the nature and alleged circumstances of the offence to which the proceedings relate;

(b) the age of the witness;

(c) such of the following matters as appear to the court to be relevant, namely—

(i) the social and cultural background and ethnic origins of the witness,

(ii) the domestic and employment circumstances of the witness, and

(iii) any religious beliefs or political opinions of the witness;

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(d) any behaviour towards the witness on the part of—

(i) the accused,

(ii) members of the family or associates of the accused, or

(iii) any other person who is likely to be an accused or a witness in the proceedings.

(5) In determining that question the court must in addition consider any views expressed by the witness.

(6) For the purposes of this section a reporting direction in relation to a witness is a direction that no matter relating to the witness shall during the witness's lifetime be included in any publication if it is likely to lead members of the public to identify him as being a witness in the proceedings.

(7) The matters relating to a witness in relation to which the restrictions imposed by a reporting direction apply (if their inclusion in any publication is likely to have the result mentioned in subsection (6)) include in particular—

(a) the witness's name,

(b) the witness's address,

(c) the identity of any educational establishment attended by the witness,

(d) the identity of any place of work, and

(e) any still or moving picture of the witness.

(8) In determining whether to give a reporting direction the court shall consider—

(a) whether it would be in the interests of justice to do so, and

(b) the public interest in avoiding the imposition of a substantial and unreasonable restriction on the reporting of the proceedings.

(9) The court or an appellate court may by direction ("an excepting direction") dispense, to any extent specified in the excepting direction, with the restrictions imposed by a reporting direction if—

(a) it is satisfied that it is necessary in the interests of justice to do so, or

(b) it is satisfied—

(i) that the effect of those restrictions is to impose a substantial and unreasonable restriction on the reporting of the proceedings, and

(ii) that it is in the public interest to remove or relax that restriction;

but no excepting direction shall be given under paragraph (b) by reason only of the fact that the proceedings have been determined in any way or have been abandoned.

(10) A reporting direction may be revoked by the court or an appellate court.

(11) An excepting direction—

(a) may be given at the time the reporting direction is given or subsequently; and

(b) may be varied or revoked by the court or an appellate court.

(12) In this section—

(a) "appellate court", in relation to any proceedings in a court, means a court dealing with an appeal (including an appeal by way of case stated) arising out of the proceedings or with any further appeal;

(b) references to the quality of a witness's evidence are to its quality in terms of completeness, coherence and accuracy (and for this purpose "coherence"

refers to a witness's ability in giving evidence to give answers which address the questions put to the witness and can be understood both individually and collectively);

(c) references to the preparation of the case of a party to any proceedings include, where the party is the prosecution, the carrying out of investigations into any offence at any time charged in the proceedings.

Commencement Information

I38 Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4)

I39 S. 46 in force at 7.10.2004 for specified purposes for S. by S.S.I. 2004/408, **art. 3(a)**

I40 S. 46 in force at 7.10.2004 for E.W. by S.I. 2004/2428, **art. 2(a)**

I41 S. 46 in force at 8.11.2004 for N.I. in so far as not already in force by S.R. 2004/467, **art. 2(a)**

*Reports relating to directions under **[**[F68]Chapter I or II**][**[F68]Chapter 1, 1A or 2**]***

Textual Amendments

F68 Words in s. 47 cross-heading substituted (E.W.N.I.) (1.4.2007) by Police and Justice Act 2006 (c. 48), s. 53(1), **Sch. 14 para. 37(2)**; S.I. 2007/709, art. 3(p) (with art. 6)

47 Restrictions on reporting directions under [[F69]Chapter I or II][[F69]Chapter 1, 1A or 2].

(1) Except as provided by this section, no publication shall include a report of a matter falling within subsection (2).

(2) The matters falling within this subsection are—

(a) a direction under section 19**[**[F70], 33A**]** or 36 or an order discharging, or (in the case of a direction under section 19) varying, such a direction;

[[F71](aa) a direction under Article 7 or 24 of the Criminal Evidence (Northern Ireland) Order 1999 or an order discharging, or (in the case of a direction under Article 7) varying, such a direction;**]**

(b) proceedings—

(i) on an application for such a direction or order, or

(ii) where the court acts of its own motion to determine whether to give or make any such direction or order.

(3) The court dealing with a matter falling within subsection (2) may order that subsection (1) is not to apply, or is not to apply to a specified extent, to a report of that matter.

(4) Where—

(a) there is only one accused in the relevant proceedings, and

(b) he objects to the making of an order under subsection (3),

the court shall make the order if (and only if) satisfied after hearing the representations of the accused that it is in the interests of justice to do so; and if the order is made it shall not apply to the extent that a report deals with any such objections or representations.

(5) Where—

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(a) there are two or more accused in the relevant proceedings, and

(b) one or more of them object to the making of an order under subsection (3),

the court shall make the order if (and only if) satisfied after hearing the representations of each of the accused that it is in the interests of justice to do so; and if the order is made it shall not apply to the extent that a report deals with any such objections or representations.

(6) Subsection (1) does not apply to the inclusion in a publication of a report of matters after the relevant proceedings are either—

(a) determined (by acquittal, conviction or otherwise), or

(b) abandoned,

in relation to the accused or (if there is more than one) in relation to each of the accused.

(7) In this section "the relevant proceedings" means the proceedings to which any such direction as is mentioned in subsection (2) relates or would relate.

(8) Nothing in this section affects any prohibition or restriction by virtue of any other enactment on the inclusion of matter in a publication.

Textual Amendments

F69 Words in s. 47 heading substituted (E.W.N.I.) (1.4.2007) by Police and Justice Act 2006 (c. 48), s. 53(1), **Sch. 14 para. 37(2)**; S.I. 2007/709, art. 3(p) (with art. 6)

F70 Words in s. 47(2)(a) inserted (E.W.N.I.) (1.4.2007) by Police and Justice Act 2006 (c. 48), s. 53(1), **Sch. 14 para. 37(3)**; S.I. 2007/709, art. 3(p) (with art. 6)

F71 S. 47(2)(aa) inserted (30.6.2003 for specified purposes, 1.12.2003 for specified purposes, 8.11.2004 for specified purposes, 21.12.2004 for specified purposes) by The Criminal Evidence (Northern Ireland) Order 1999 (S.I. 1999/2789), art. 1(2), **Sch. 1 para. 6** (with Sch. 2); S.R. 2003/323, art. 2, Sch.; S.R. 2003/476, arts. 2, 4; S.R. 2004/468, art. 2; S.R. 2004/531, art. 2

Modifications etc. (not altering text)

C47 S. 47 applied (with modifications) by 1998 c. 37, s. 1I(5) (as inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 143**, 178(8); S.I. 2005/1521, art. 3(1)(s))

C48 S. 47 applied (with modifications) by S.I. 2004/1988 (N.I. 12), art. 6C(5) (as inserted (18.9.2006) by The Criminal Justice (Northern Ireland) Order 2005 (S.I. 2005/1965), arts. 1(2)(a), **6**; S.R. 2006/368, art. 2(a))

C49 S. 47 applied (with modifications) (E.W.) (20.10.2014) by Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), **ss. 31(4)**, 185(1) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/2590, art. 3(a)

C50 S. 47 applied (with modifications) (E.W.) (23.3.2015) by Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), **ss. 16(4)**, 185(1) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/373, art. 4(a)

C51 S. 47 applied (with modifications) (26.5.2016) by Psychoactive Substances Act 2016 (c. 2), **ss. 33(4)**, 63(2); S.I. 2016/553, reg. 2

C52 S. 47 applied (with modifications) (26.5.2016) by Psychoactive Substances Act 2016 (c. 2), **ss. 34(4)**, 63(2); S.I. 2016/553, reg. 2

Commencement Information

I42 S. 47 wholly in force at 24.7.2002; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 47 in force in so far as not already in force for E.W. at 24.7.2002 by S.I. 2002/1739, **art. 2(d)**

I43 S. 47 in force at 8.11.2004 for N.I. in so far as not already in force by S.R. 2004/467, **art. 2(b)**

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Other restrictions

48 Amendments relating to other reporting restrictions.

Schedule 2, which contains amendments relating to reporting restrictions under—

(a) the [M16]Children and Young Persons Act 1933,

(b) the [M17]Sexual Offences (Amendment) Act 1976,

(c) the [M18]Sexual Offences (Northern Ireland) Order 1978,

(d) the [M19]Sexual Offences (Amendment) Act 1992, and

(e) the [M20]Criminal Justice (Northern Ireland) Order 1994,

shall have effect.

Commencement Information

I44 Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4)

I45 S. 48(a) in force at 13.4.2015 for E.W. in so far as not already in force by S.I. 2015/818, **art. 2(b)**

I46 S. 48(b) in force at 7.10.2004 for E.W. by S.I. 2004/2428, **art. 2(b)**

I47 S. 48(c) in force at 8.11.2004 for N.I. in so far as not already in force by S.R. 2004/467, **art. 2(c)**

I48 S. 48(d) in force at 7.10.2004 for E.W. by S.I. 2004/2428, **art. 2(b)**

I49 S. 48(d) in force at 7.10.2004 for specified purposes for S. by S.S.I. 2004/408, **art. 3(c)(d)**

I50 S. 48(e) in force at 8.11.2004 for N.I. in so far as not already in force by S.R. 2004/467, **art. 2(c)**

Marginal Citations

M16 1933 c. 12.

M17 1976 c. 82.

M18 S.I 1978/460 (N.I. 15).

M19 1992 c. 34.

M20 S.I. 1994/2795 (N.I. 15).

Offences

49 Offences under Chapter IV.

(1) This section applies if a publication—

(a) includes any matter in contravention of section 44(2) or of a direction under section 45(3) or 46(2); or

(b) includes a report in contravention of section 47.

[[F72](1A) This section also applies—

(a) in England and Wales, Scotland and Northern Ireland, if a publication includes any matter in contravention of a direction under section 45A(2) made by a service court;

(b) in England and Wales, if a publication includes any matter in contravention of a direction under section 45A(2) made by a court other than a service court.**]**

(2) Where the publication is a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical is guilty of an offence.

(3) Where the publication is a relevant programme—

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(a) any body corporate or Scottish partnership engaged in providing the programme service in which the programme is included, and

(b) any person having functions in relation to the programme corresponding to those of an editor of a newspaper,

is guilty of an offence.

(4) In the case of any other publication, any person publishing it is guilty of an offence.

(5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) Proceedings for an offence under this section in respect of a publication falling within subsection (1)(b) may not be instituted—

(a) in England and Wales otherwise than by or with the consent of the Attorney General, or

(b) in Northern Ireland otherwise than by or with the consent of the Attorney General for Northern Ireland.

[[F73](7) Schedule 2A makes special provision in connection with the operation of this section, so far as it relates to a publication that includes matter in contravention of a direction under section 45A(2), in relation to persons providing information society services.**]**

Textual Amendments

F72 S. 49(1A) inserted (13.4.2015) by Criminal Justice and Courts Act 2015 (c. 2), **ss. 78(3)(a)**, 95(1); S.I. 2015/778, art. 3, Sch. 1 para. 63

F73 S. 49(7) inserted (13.4.2015) by Criminal Justice and Courts Act 2015 (c. 2), **ss. 78(3)(b)**, 95(1); S.I. 2015/778, art. 3, Sch. 1 para. 63

Modifications etc. (not altering text)

C53 S. 49 applied by S.I. 2004/1988 (N.I. 12), art. 6C(5) (as inserted (N.I.) (18.9.2006) by The Criminal Justice (Northern Ireland) Order 2005 (S.I. 2005/1965), arts. 1(2)(a), **6**; S.R. 2006/368, art. 2(a))

C54 S. 49 applied (E.W.) (20.10.2014) by Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), **ss. 31(4)**, 185(1) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/2590, art. 3(a)

C55 S. 49 applied (E.W.) (23.3.2015) by Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), **ss. 16(4)**, 185(1) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/373, art. 4(a)

C56 S. 49 applied (26.5.2016) by Psychoactive Substances Act 2016 (c. 2), **ss. 33(4)**, 63(2); S.I. 2016/553, reg. 2

C57 S. 49 applied (26.5.2016) by Psychoactive Substances Act 2016 (c. 2), **ss. 34(4)**, 63(2); S.I. 2016/553, reg. 2

Commencement Information

I51 Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4)

I52 S. 49 in force at 7.10.2004 for specified purposes for E.W. by S.I. 2004/2428, **art. 2(c)**

I53 S. 49 in force at 8.11.2004 for specified purposes for N.I. by S.R. 2004/467, **art. 2(d)**

I54 S. 49 in force at 13.4.2015 for specified purposes for E.W. by S.I. 2015/818, **art. 2(c)**

I55 S. 49(1)-(5) in force at 7.10.2004 for specified purposes for S. by S.S.I. 2004/408, **art. 3(b)**

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50 Defences.

(1) Where a person is charged with an offence under section 49 it shall be a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication included the matter or report in question.

(2) Where—
- (a) a person is charged with an offence under section 49, and
- (b) the offence relates to the inclusion of any matter in a publication in contravention of section 44(2),

it shall be a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the criminal investigation in question had begun.

(3) Where—
- (a) paragraphs (a) and (b) of subsection (2) apply, and
- (b) the contravention of section 44(2) does not relate to either—
  - (i) the person by whom the offence mentioned in that provision is alleged to have been committed, or
  - (ii) (where that offence is one in relation to which section 1 of the [M21]Sexual Offences (Amendment) Act 1992 applies) a person who is alleged to be a witness to the commission of the offence,

  it shall be a defence to show to the satisfaction of the court that the inclusion in the publication of the matter in question was in the public interest on the ground that, to the extent that they operated to prevent that matter from being so included, the effect of the restrictions imposed by section 44(2) was to impose a substantial and unreasonable restriction on the reporting of matters connected with that offence.

(4) Subsection (5) applies where—
- (a) paragraphs (a) and (b) of subsection (2) apply, and
- (b) the contravention of section 44(2) relates to a person ("the protected person") who is neither—
  - (i) the person mentioned in subsection (3)(b)(i), nor
  - (ii) a person within subsection (3)(b)(ii) who is under the age of 16.

(5) In such a case it shall be a defence, subject to subsection (6), to prove that written consent to the inclusion of the matter in question in the publication had been given—
- (a) by an appropriate person, if at the time when the consent was given the protected person was under the age of 16, or
- (b) by the protected person, if that person was aged 16 or 17 at that time,

and (where the consent was given by an appropriate person) that written notice had been previously given to that person drawing to his attention the need to consider the welfare of the protected person when deciding whether to give consent.

(6) The defence provided by subsection (5) is not available if—
- (a) (where the consent was given by an appropriate person) it is proved that written or other notice withdrawing the consent—
  - (i) was given to the appropriate recipient by any other appropriate person or by the protected person, and
  - (ii) was so given in sufficient time to enable the inclusion in the publication of the matter in question to be prevented; or

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(b) subsection (8) applies.

[[F74](6A) Where—

(a) a person is charged with an offence under section 49, and

(b) the offence relates to the inclusion of any matter in a publication in contravention of a direction under section 45A(2),

it shall be a defence, unless subsection (6B) or (8) applies, to prove that the person in relation to whom the direction was given had given written consent to the inclusion of that matter in the publication.

(6B) Written consent is not a defence by virtue of subsection (6A) if the person was under the age of 18 at the time the consent was given.**]**

(7) Where—

(a) a person is charged with an offence under section 49, and

(b) the offence relates to the inclusion of any matter in a publication in contravention of a direction under section 46(2),

it shall be a defence, unless subsection (8) applies, to prove that the person in relation to whom the direction was given had given written consent to the inclusion of that matter in the publication.

(8) Written consent is not a defence **[**[F75]by virtue of subsections (5) to (7)**]** if it is proved that any person interfered—

(a) with the peace or comfort of the person giving the consent, or

(b) (where the consent was given by an appropriate person) with the peace or comfort of either that person or the protected person,

with intent to obtain the consent.

(9) In this section—

"an appropriate person" means (subject to subsections (10) to (12))—

(a) in England and Wales or Northern Ireland, a person who is a parent or guardian of the protected person, or

(b) in Scotland, a person who has parental responsibilities (within the meaning of section 1(3) of the [M22]Children (Scotland) Act 1995) in relation to the protected person;

"guardian", in relation to the protected person, means any person who is not a parent of the protected person but who has parental responsibility for the protected person within the meaning of—

(a) (in England and Wales) the [M23]Children Act 1989, or

(b) (in Northern Ireland) the [M24]Children (Northern Ireland) Order 1995.

(10) Where the protected person is (within the meaning of the Children Act 1989 **[**[F76]or the Social Services and Well-being (Wales) Act 2014**]**) a child who is looked after by a local authority, "an appropriate person" means a person who is—

(a) a representative of that authority, or

(b) a parent or guardian of the protected person with whom the protected person is allowed to live.

(11) Where the protected person is (within the meaning of the [M25]Children (Northern Ireland) Order 1995) a child who is looked after by an authority, "an appropriate person" means a person who is—

(a) an officer of that authority, or

(b) a parent or guardian of the protected person with whom the protected person is allowed to live.

(12) Where the protected person is (within the meaning of section 17(6) of the [M26]Children (Scotland) Act 1995) a child who is looked after by a local authority, "an appropriate person" means a person who is—

(a) a representative of that authority, or

(b) a person who has parental responsibilities (within the meaning of section 1(3) of that Act) in relation to the protected person and with whom the protected person is allowed to live.

(13) However, no person by whom the offence mentioned in section 44(2) is alleged to have been committed is, by virtue of subsections (9) to (12), an appropriate person for the purposes of this section.

(14) In this section "the appropriate recipient", in relation to a notice under subsection (6)(a), means—

(a) the person to whom the notice giving consent was given,

(b) (if different) the person by whom the matter in question was published, or

(c) any other person exercising, on behalf of the person mentioned in paragraph (b), any responsibility in relation to the publication of that matter;

and for this purpose "person" includes a body of persons and a partnership.

Textual Amendments

F74 S. 50(6A)(6B) inserted (13.4.2015) by Criminal Justice and Courts Act 2015 (c. 2), **ss. 78(4)(a)**, 95(1); S.I. 2015/778, art. 3, Sch. 1 para. 63

F75 Words in s. 50(8) inserted (13.4.2015) by Criminal Justice and Courts Act 2015 (c. 2), **ss. 78(4)(b)**, 95(1); S.I. 2015/778, art. 3, Sch. 1 para. 63

F76 Words in s. 50(10) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **163**

Commencement Information

I56 Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4)

I57 S. 50 in force at 7.10.2004 for specified purposes for E.W. by S.I. 2004/2428, **art. 2(c)**

I58 S. 50 in force at 7.10.2004 for specified purposes for S. by S.S.I. 2004/408, **art. 3(b)**

I59 S. 50 in force at 8.11.2004 for specified purposes for N.I. by S.R. 2004/467, **art. 2(d)**

I60 S. 50 in force at 13.4.2015 for specified purposes for E.W. by S.I. 2015/818, **art. 2(d)**

Marginal Citations

M21 1992 c. 34.

M22 1995 c. 36.

M23 1989 c. 41.

M24 S.I. 1995/755 (N.I. 2.).

M25 S.I. 1995/755 (N.I. 2.).

M26 1995 c. 36.

51 Offences committed by bodies corporate or Scottish partnerships.

(1) If an offence under section 49 committed by a body corporate is proved—

(a) to have been committed with the consent or connivance of, or

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(b) to be attributable to any neglect on the part of,

an officer, the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In subsection (1) "officer" means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(3) If the affairs of a body corporate are managed by its members, "director" in subsection (2) means a member of that body.

(4) Where an offence under section 49 is committed by a Scottish partnership and is proved to have been committed with the consent or connivance of a partner, he as well as the partnership shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Modifications etc. (not altering text)

C58 S. 51 applied by S.I. 2004/1988 (N.I. 12), art. 6C(5) (as inserted (N.I.) (18.9.2006) by The Criminal Justice (Northern Ireland) Order 2005 (S.I. 2005/1965), arts. 1(2)(a), **6**; S.R. 2006/368, art. 2(a))

C59 S. 51 applied (E.W.) (20.10.2014) by Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), **ss. 31(4)**, 185(1) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/2590, art. 3(a)

C60 S. 51 applied (E.W.) (23.3.2015) by Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), **ss. 16(4)**, 185(1) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2015/373, art. 4(a)

C61 S. 51 applied (26.5.2016) by Psychoactive Substances Act 2016 (c. 2), **ss. 33(4)**, 63(2); S.I. 2016/553, reg. 2

C62 S. 51 applied (26.5.2016) by Psychoactive Substances Act 2016 (c. 2), **ss. 34(4)**, 63(2); S.I. 2016/553, reg. 2

Commencement Information

I61 Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4)

I62 S. 51 in force at 7.10.2004 for specified purposes for S. by S.S.I. 2004/408, **art. 3(b)**

I63 S. 51 in force at 7.10.2004 for specified purposes for E.W. by S.I. 2004/2428, **art. 2(c)**

I64 S. 51 in force at 8.11.2004 for specified purposes for N.I. by S.R. 2004/467, **art. 2(d)**

I65 S. 51 in force at 13.4.2015 for specified purposes for E.W. by S.I. 2015/818, **art. 2(e)**

Supplementary

52 Decisions as to public interest for purposes of Chapter IV.

(1) Where for the purposes of any provision of this Chapter it falls to a court to determine whether anything is (or, as the case may be, was) in the public interest, the court must have regard, in particular, to the matters referred to in subsection (2) (so far as relevant).

(2) Those matters are—

(a) the interest in each of the following—

(i) the open reporting of crime,

(ii) the open reporting of matters relating to human health or safety, and

(iii) the prevention and exposure of miscarriages of justice;

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(b) the welfare of any person in relation to whom the relevant restrictions imposed by or under this Chapter apply or would apply (or, as the case may be, applied); and

(c) any views expressed—

(i) by an appropriate person on behalf of a person within paragraph (b) who is under the age of 16 ("the protected person"), or

(ii) by a person within that paragraph who has attained that age.

(3) In subsection (2) "an appropriate person", in relation to the protected person, has the same meaning as it has for the purposes of section 50.

Commencement Information

I66 Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4)

I67 S. 52 in force at 7.10.2004 for specified purposes for E.W. by S.I. 2004/2428, **art. 2(c)**

I68 S. 52 in force at 7.10.2004 for specified purposes for S. by S.S.I. 2004/408, **art. 3(b)**

I69 S. 52 in force at 8.11.2004 for specified purposes for N.I. by S.R. 2004/467, **art. 2(d)**

I70 S. 52 in force at 13.4.2015 for specified purposes for E.W. by S.I. 2015/818, **art. 2(f)**

CHAPTER V

COMPETENCE OF WITNESSES AND CAPACITY TO BE SWORN

Competence of witnesses

53 Competence of witnesses to give evidence.

(1) At every stage in criminal proceedings all persons are (whatever their age) competent to give evidence.

(2) Subsection (1) has effect subject to subsections (3) and (4).

(3) A person is not competent to give evidence in criminal proceedings if it appears to the court that he is not a person who is able to—

(a) understand questions put to him as a witness, and

(b) give answers to them which can be understood.

(4) A person charged in criminal proceedings is not competent to give evidence in the proceedings for the prosecution (whether he is the only person, or is one of two or more persons, charged in the proceedings).

(5) In subsection (4) the reference to a person charged in criminal proceedings does not include a person who is not, or is no longer, liable to be convicted of any offence in the proceedings (whether as a result of pleading guilty or for any other reason).

Modifications etc. (not altering text)

C63 S. 53 applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **9**, 10

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Changes to legislation: *Youth Justice and Criminal Evidence Act 1999, Part II is up to date with all changes known to be in force on or before 03 June 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)*

54 Determining competence of witnesses.

(1) Any question whether a witness in criminal proceedings is competent to give evidence in the proceedings, whether raised—
  (a) by a party to the proceedings, or
  (b) by the court of its own motion,
shall be determined by the court in accordance with this section.

(2) It is for the party calling the witness to satisfy the court that, on a balance of probabilities, the witness is competent to give evidence in the proceedings.

(3) In determining the question mentioned in subsection (1) the court shall treat the witness as having the benefit of any directions under section 19 which the court has given, or proposes to give, in relation to the witness.

(4) Any proceedings held for the determination of the question shall take place in the absence of the jury (if there is one).

(5) Expert evidence may be received on the question.

(6) Any questioning of the witness (where the court considers that necessary) shall be conducted by the court in the presence of the parties.

Modifications etc. (not altering text)

C64 S. 54(1)-(3) applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **9**, 10

C65 S. 54(4) applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **9**, 10

C66 S. 54(5) applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **9**, 10

C67 S. 54(6) applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **9**, 10

Giving of sworn or unsworn evidence

55 Determining whether witness to be sworn.

(1) Any question whether a witness in criminal proceedings may be sworn for the purpose of giving evidence on oath, whether raised—
  (a) by a party to the proceedings, or
  (b) by the court of its own motion,
shall be determined by the court in accordance with this section.

(2) The witness may not be sworn for that purpose unless—
  (a) he has attained the age of 14, and
  (b) he has a sufficient appreciation of the solemnity of the occasion and of the particular responsibility to tell the truth which is involved in taking an oath.

(3) The witness shall, if he is able to give intelligible testimony, be presumed to have a sufficient appreciation of those matters if no evidence tending to show the contrary is adduced (by any party).

Status: *Point in time view as at 24/08/2020.*
Changes to legislation: *Youth Justice and Criminal Evidence Act 1999, Part II is up to date with all changes known to be in force on or before 03 June 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)*

(4) If any such evidence is adduced, it is for the party seeking to have the witness sworn to satisfy the court that, on a balance of probabilities, the witness has attained the age of 14 and has a sufficient appreciation of the matters mentioned in subsection (2)(b).

(5) Any proceedings held for the determination of the question mentioned in subsection (1) shall take place in the absence of the jury (if there is one).

(6) Expert evidence may be received on the question.

(7) Any questioning of the witness (where the court considers that necessary) shall be conducted by the court in the presence of the parties.

(8) For the purposes of this section a person is able to give intelligible testimony if he is able to—
   (a) understand questions put to him as a witness, and
   (b) give answers to them which can be understood.

Modifications etc. (not altering text)

C68 S. 55(1)-(4) applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **9**, 10

C69 S. 55(5) applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **9**, 10

C70 S. 55(6)-(8) applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **9**, 10

56 Reception of unsworn evidence.

(1) Subsections (2) and (3) apply to a person (of any age) who—
   (a) is competent to give evidence in criminal proceedings, but
   (b) (by virtue of section 55(2)) is not permitted to be sworn for the purpose of giving evidence on oath in such proceedings.

(2) The evidence in criminal proceedings of a person to whom this subsection applies shall be given unsworn.

(3) A deposition of unsworn evidence given by a person to whom this subsection applies may be taken for the purposes of criminal proceedings as if that evidence had been given on oath.

(4) A court in criminal proceedings shall accordingly receive in evidence any evidence given unsworn in pursuance of subsection (2) or (3).

(5) Where a person ("the witness") who is competent to give evidence in criminal proceedings gives evidence in such proceedings unsworn, no conviction, verdict or finding in those proceedings shall be taken to be unsafe for the purposes of any of sections 2(1), 13(1) and 16(1) of the Criminal Appeal Act 1968 (grounds for allowing appeals) by reason only that it appears to the Court of Appeal that the witness was a person falling within section 55(2) (and should accordingly have given his evidence on oath).

Status: *Point in time view as at 24/08/2020.*
Changes to legislation: *Youth Justice and Criminal Evidence Act 1999, Part II is up to date with all changes known to be in force on or before 03 June 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)*

Modifications etc. (not altering text)

C71 S. 56(1)-(4) applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **9**, 10

C72 S. 56(5) applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **9**, 10

57 Penalty for giving false unsworn evidence.

(1) This section applies where a person gives unsworn evidence in criminal proceedings in pursuance of section 56(2) or (3).

(2) If such a person wilfully gives false evidence in such circumstances that, had the evidence been given on oath, he would have been guilty of perjury, he shall be guilty of an offence and liable on summary conviction to—

(a) imprisonment for a term not exceeding 6 months, or

(b) a fine not exceeding £1,000,

or both.

(3) In relation to a person under the age of 14, subsection (2) shall have effect as if for the words following "on summary conviction" there were substituted " to a fine not exceeding £250 ".

Modifications etc. (not altering text)

C73 S. 57 applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **9**, 10

CHAPTER VI

RESTRICTIONS ON USE OF EVIDENCE

Additional restrictions

58 Inferences from silence not permissible where no prior access to legal advice.

(1) Sections 34 and 36 to 38 of the [M27]Criminal Justice and Public Order Act 1994 (inferences from accused's silence) shall be amended as follows.

(2) In section 34 (effect of accused's failure to mention facts when questioned or charged), after subsection (2) there shall be inserted—

"(2A) Where the accused was at an authorised place of detention at the time of the failure, subsections (1) and (2) above do not apply if he had not been allowed an opportunity to consult a solicitor prior to being questioned, charged or informed as mentioned in subsection (1) above."

(3) In section 36 (effect of accused's failure or refusal to account for objects, substances or marks), after subsection (4) there shall be inserted—

"(4A) Where the accused was at an authorised place of detention at the time of the failure or refusal, subsections (1) and (2) above do not apply if he had not been allowed an opportunity to consult a solicitor prior to the request being made."

(4) In section 37 (effect of accused's failure or refusal to account for presence at a particular place), after subsection (3) there shall be inserted—

"(3A) Where the accused was at an authorised place of detention at the time of the failure or refusal, subsections (1) and (2) do not apply if he had not been allowed an opportunity to consult a solicitor prior to the request being made."

(5) In section 38 (interpretation), after subsection (2) there shall be inserted—

"(2A) In each of sections 34(2A), 36(4A) and 37(3A) "authorised place of detention" means—

(a) a police station; or

(b) any other place prescribed for the purposes of that provision by order made by the Secretary of State;

and the power to make an order under this subsection shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament."

Commencement Information

I71 S. 58(5) in force for certain purposes at Royal Assent, see s. 68(4)(d)

I72 S. 58(1)-(4) in force at 1.4.2003 for E.W. by S.I. 2003/707, **art. 2(a)**

I73 S. 58(5) in force at 1.4.2003 for E.W. in so far as not already in force by S.I. 2003/707, **art. 2(a)**

Marginal Citations

M27 1994 c. 33.

59 Restriction on use of answers etc. obtained under compulsion.

Schedule 3, which amends enactments providing for the use of answers and statements given under compulsion so as to restrict in criminal proceedings their use in evidence against the persons giving them, shall have effect.

Commencement Information

I74 S. 59 wholly in force; s. 59 not in force at Royal Assent see s. 68(3); s. 59 in force in relation to England and Wales and Northern Ireland at 14.4.2000 by S.I. 2000/1034, **arts. 2(a)**, 3; s. 59 in force in relation to Scotland at 1.1.2001 by S.S.I. 2000/445, **art. 2**

Removal of restriction

60 Removal of restriction on use of evidence from computer records.

Section 69 of the [M28]Police and Criminal Evidence Act 1984 (evidence from computer records inadmissible unless conditions relating to proper use and operation of computer shown to be satisfied) shall cease to have effect.

Status: *Point in time view as at 24/08/2020.*
Changes to legislation: *Youth Justice and Criminal Evidence Act 1999, Part II is up to date with all changes known to be in force on or before 03 June 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)*

Marginal Citations
M28 1984 c. 60.

CHAPTER VII

GENERAL

61 Application of Part II to service courts.

(1) The Secretary of State may by order direct that any provision of—
(a) Chapters I to III and V, or
(b) sections 62, 63 and 65 so far as having effect for the purposes of any of those Chapters,

shall apply, subject to such modifications as he may specify, to any proceedings before a service court.

(2) Chapter IV (and sections 62, 63 and 65 so far as having effect for the purposes of that Chapter) shall have effect for the purposes of proceedings before a service court subject to any modifications which the Secretary of State may by order specify.

(3) The power to make an order under section 39 of the [M29]Criminal Justice and Public Order Act 1994 (power to apply sections 34 to 38 to the armed forces) in relation to any provision of sections 34 to 38 of that Act shall be exercisable in relation to any provision of those sections as amended by section 58 above.

Commencement Information
I75 S. 61(2) in force for certain purposes and s. 61(1)(3) in force at Royal Assent, see s. 68(4)(d)(e)
I76 S. 61(2) in force at 6.12.2006 in so far as not already in force by S.I. 2006/2885, **art. 2(a)**

Marginal Citations
M29 1994 c. 33.

62 Meaning of "sexual offence" and other references to offences.

[[F77](1) In this Part "sexual offence" means any offence under—
(a) Part 1 of the Sexual Offences Act 2003 or any relevant superseded offence; or
(b) section 2 of the Modern Slavery Act 2015 (human trafficking) committed with a view to exploitation that consists of or includes behaviour within section 3(3) of that Act (sexual exploitation).**]**

[[F78](1A) In subsection (1) "relevant superseded offence" means—
(a) rape or burglary with intent to rape;
(b) an offence under any of sections 2 to 12 and 14 to 17 of the Sexual Offences Act 1956 (unlawful intercourse, indecent assault, forcible abduction etc.);
(c) an offence under section 128 of the Mental Health Act 1959 (unlawful intercourse with person receiving treatment for mental disorder by member of hospital staff etc.);

(d) an offence under section 1 of the Indecency with Children Act 1960 (indecent conduct towards child under 14);

(e) an offence under section 54 of the Criminal Law Act 1977 (incitement of child under 16 to commit incest).**]**

(2) In this Part any reference (including a reference having effect by virtue of this subsection) to an offence of any description ("the substantive offence") is to be taken to include a reference to an offence which consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, the substantive offence.

Textual Amendments

F77 S. 62(1) substituted (17.3.2016) by The Modern Slavery Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/244), regs. 1(1), **12**

F78 S. 62(1A) inserted (retrospective to 1.5.2004) by Criminal Justice and Immigration Act 2008 (c. 4), **Sch. 26 paras. 37(3)**, 38

Modifications etc. (not altering text)

C74 S. 62 applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **11**, 12

C75 S. 62(2) modified (1.10.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 6 para. 37** (with Sch. 13 para. 5); S.I. 2008/2504, art. 2(a)

63 General interpretation etc. of Part II.

(1) In this Part (except where the context otherwise requires)—

"accused", in relation to any criminal proceedings, means any person charged with an offence to which the proceedings relate (whether or not he has been convicted);

"the complainant", in relation to any offence (or alleged offence), means a person against or in relation to whom the offence was (or is alleged to have been) committed;

"court" (except in Chapter IV or V or subsection (2)) means a magistrates' court, the Crown Court or the criminal division of the Court of Appeal;

"legal representative" means **[**[F79]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 or the conduct of litigation (within the meaning of that Act);**]**

"picture" includes a likeness however produced;

"the prosecutor" means any person acting as prosecutor, whether an individual or body;

"publication" includes any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public (and for this purpose every relevant programme shall be taken to be so addressed), but does not include an indictment or other document prepared for use in particular legal proceedings;

"relevant programme" means a programme included in a programme service, within the meaning of the [M30]Broadcasting Act 1990;

"service court" means—

(a) **[**[F80]the Court Martial;

(b) the Service Civilian Court; or

(c) the Court Martial Appeal Court**]**

"video recording" means any recording, on any medium, from which a moving image may by any means be produced, and includes the accompanying sound-track;

"witness", in relation to any criminal proceedings, means any person called, or proposed to be called, to give evidence in the proceedings.

(2) Nothing in this Part shall affect any power of a court to exclude evidence at its discretion (whether by preventing questions being put or otherwise) which is exercisable apart from this Part.

Textual Amendments

F79 Words in s. 63(1) substituted (1.1.2010) by Legal Services Act 2007 (c. 29), s. 211(2), **Sch. 21 para. 132** (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(h)

F80 Words in s. 63(1) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by Armed Forces Act 2006 (c. 52), s. 383(2), **Sch. 16 para. 159**; S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4

Modifications etc. (not altering text)

C76 S. 63 applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, **11**, 12

C77 S. 63 applied (with modifications) (31.10.2009) by The Court Martial Appeal Court (Evidence) Order 2009 (S.I. 2009/2569), arts. 1, **5**

Marginal Citations

M30 1990 c. 42.

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