Youth Justice and Criminal Evidence Act 1999

1999 CHAPTER 23

PART II

GIVING OF EVIDENCE OR INFORMATION FOR PURPOSES OF CRIMINAL PROCEEDINGS

CHAPTER III

PROTECTION OF COMPLAINANTS IN PROCEEDINGS FOR SEXUAL OFFENCES

Modifications etc. (not altering text)

C1 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**

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.

Status: *Point in time view as at 06/12/2006.*
Changes to legislation: *Youth Justice and Criminal Evidence Act 1999, Chapter III is up to date with all changes known to be in force on or before 19 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)*

(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—

(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)

C2 S. 41 applied (with modifications) (6.12.2006) by The Youth Justice and Criminal Evidence Act 1999 (Application to the Courts-Martial Appeal Court) Order 2006 (S.I. 2006/2887), art. 1(1), **Sch.** (with art. 3)

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C3 S. 41 applied (with modifications) (6.12.2006) by The Youth Justice and Criminal Evidence Act 1999 (Application to Standing Civilian Courts) Order 2006 (S.I. 2006/2888), art. 1(1), **Sch. 1** (with art. 3)

C4 S. 41 applied (with modifications) (6.12.2006) by The Youth Justice and Criminal Evidence Act 1999 (Application to Courts-Martial) Order 2006 (S.I. 2006/2886), art. 1(1), **Sch. 1** (with art. 3)

Commencement Information

I1 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—

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

(b) the hearing of an application under paragraph 5(1) of Schedule 6 to the [M1]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 [M2]Crime and Disorder Act 1998 (application to dismiss charge by person sent for trial under section 51 **[**[F1]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

F1 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

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(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)

C5 S. 42 applied (with modifications) (6.12.2006) by The Youth Justice and Criminal Evidence Act 1999 (Application to Standing Civilian Courts) Order 2006 (S.I. 2006/2888), art. 1(1), **Sch. 1** (with art. 3)

C6 S. 42 applied (with modifications) (6.12.2006) by The Youth Justice and Criminal Evidence Act 1999 (Application to Courts-Martial) Order 2006 (S.I. 2006/2886), art. 1(1), **Sch. 1** (with art. 3)

C7 S. 42 applied (with modifications) (6.12.2006) by The Youth Justice and Criminal Evidence Act 1999 (Application to the Courts-Martial Appeal Court) Order 2006 (S.I. 2006/2887), art. 1(1), **Sch.** (with art. 3)

Commencement Information

I2 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

M1 1991 c. 53.

M2 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,

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

(3) **[**[F2]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.

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Textual Amendments

F2 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)

C8 S. 43 applied (with modifications) (6.12.2006) by The Youth Justice and Criminal Evidence Act 1999 (Application to Standing Civilian Courts) Order 2006 (S.I. 2006/2888), art. 1(1), **Sch. 1** (with art. 3)

C9 S. 43 applied (with modifications) (6.12.2006) by The Youth Justice and Criminal Evidence Act 1999 (Application to the Courts-Martial Appeal Court) Order 2006 (S.I. 2006/2887), art. 1(1), **Sch.** (with art. 3)

C10 S. 43 applied (with modifications) (6.12.2006) by The Youth Justice and Criminal Evidence Act 1999 (Application to Courts-Martial) Order 2006 (S.I. 2006/2886), art. 1(1), **Sch. 1** (with art. 3)

Commencement Information

I3 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)**

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