



# Youth Justice and Criminal Evidence Act 1999

## 1999 CHAPTER 23

### PART II

#### GIVING OF EVIDENCE OR INFORMATION FOR PURPOSES OF CRIMINAL PROCEEDINGS

#### CHAPTER IV

#### REPORTING RESTRICTIONS

#### *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
  - (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.

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- (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 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.
- (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

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(b) with the leave of the Crown Court, any other person, may, in accordance with rules of court, appeal to the Crown Court against that decision or appear or be represented at the hearing of such an appeal.

(12) On such an appeal the Crown 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—
  - (i) a person subject to military law, air-force law or the Naval Discipline Act 1957, or
  - (ii) any other person to whom provisions of Part II of the Army Act 1955, Part II of the Air Force Act 1955 or Parts I and II of the Naval Discipline Act 1957 apply (whether with or without any modifications).

#### **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 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;

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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,
 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.

#### *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).

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- (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;
  - (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.

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- (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.

*Reports relating to directions under Chapter I or II*

## **47 Restrictions on reporting directions under Chapter I or II**

- (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 or 36 or an order discharging, or (in the case of a direction under section 19) 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.

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- (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—
- (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.

#### *Other restrictions*

### **48 Amendments relating to other reporting restrictions**

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

- (a) the Children and Young Persons Act 1933,
  - (b) the Sexual Offences (Amendment) Act 1976,
  - (c) the Sexual Offences (Northern Ireland) Order 1978,
  - (d) the Sexual Offences (Amendment) Act 1992, and
  - (e) the Criminal Justice (Northern Ireland) Order 1994,
- shall have effect.

#### *Offences*

### **49 Offences under Chapter IV**

- (1) This section applies if a publication—

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- (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.
- (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—
  - (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.

## 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 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



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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
- (b) subsection (8) applies.

(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 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 Children (Scotland) Act 1995) in relation to the protected person;

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“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 Children Act 1989, or
- (b) (in Northern Ireland) the Children (Northern Ireland) Order 1995.

(10) Where the protected person is (within the meaning of the Children Act 1989) 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 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 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.

## **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
- (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.

### *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;
  - (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.