



# Coroners and Justice Act 2009

## 2009 CHAPTER 25

### PART 3

#### CRIMINAL EVIDENCE, INVESTIGATIONS AND PROCEDURE

### CHAPTER 5

#### MISCELLANEOUS

#### *Evidence by video recording*

#### **111 Effect of admission of video recording**

In section 138 of the [Criminal Justice Act 2003 \(c. 44\)](#) (video evidence: further provisions), omit subsection (1) (no evidence in chief on matter dealt with adequately in recorded account).

#### *Evidence of previous complaints*

#### **112 Admissibility of evidence of previous complaints**

In section 120(7) of the [Criminal Justice Act 2003](#) (third condition for admitting previous statement of witness as evidence of matter stated of which oral evidence of witness would be admitted), omit paragraph (d) (requirement that complaint be made as soon as could reasonably be expected after the alleged conduct).

*Immunity etc*

**113 Powers in respect of offenders who assist investigations and prosecutions**

- (1) Chapter 2 of Part 2 of the [Serious Organised Crime and Police Act 2005 \(c. 15\)](#) is amended as follows.
- (2) In section 71 (assistance by offender: immunity from prosecution), in subsection (1) (immunity notice)—
  - (a) for “any offence” substitute “an indictable offence or an offence triable either way”, and
  - (b) after “prosecution”, in second place it occurs, insert “for any offence”.
- (3) In subsection (4) of that section (specified prosecutors)—
  - (a) after paragraph (d) insert—
    - “(da) the Financial Services Authority;
    - (db) the Secretary of State for Business, Innovation and Skills, acting personally;”, and
  - (b) in paragraph (e) for “(d)” substitute “(db)”.
- (4) After subsection (6) of that section insert—
 

“(6A) In exercising the power to designate a prosecutor under subsection (4)(e), the Financial Services Authority and the Secretary of State for Business, Innovation and Skills may each designate only—

  - (a) one prosecutor (a “chief prosecutor”) to act at any one time, and
  - (b) an alternative prosecutor (a “deputy prosecutor”) to act as a specified prosecutor—
    - (i) when the chief prosecutor is unavailable, or
    - (ii) during any period when no chief prosecutor is designated.

(6B) Paragraph 5(1) of Schedule 1 to the Financial Services and Markets Act 2000 (arrangements for discharging functions of the Authority) does not apply to the exercise of the powers conferred on the Financial Services Authority under this Chapter.

(6C) An immunity notice may be given by the Financial Services Authority, the Secretary of State for Business, Innovation and Skills or a prosecutor designated by either of them under subsection (4)(e), only with the consent of the Attorney General.”
- (5) In section 72 (assistance by offender: undertakings as to use of evidence), in subsection (1) (restricted use undertaking) for “any offence” substitute “an indictable offence or an offence triable either way”.
- (6) In subsection (2)(a) of that section, at the beginning insert “any”.
- (7) After section 75A insert—

**“75B Guidance about use of powers under sections 71 to 74**

- (1) The Attorney General may issue guidance to specified prosecutors about the exercise by them of any of their powers under sections 71 to 74.

- (2) The Attorney General may from time to time revise any guidance issued under this section.
- (3) In this section “specified prosecutor” is to be construed in accordance with section 71.”

### *Bail*

#### **114 Bail: risk of committing an offence causing injury**

- (1) Part 1 of Schedule 1 to the [Bail Act 1976 \(c. 63\)](#) (defendants accused or convicted of imprisonable offences) is amended as follows.
- (2) After paragraph 6 insert—

“6ZA If the defendant is charged with murder, the defendant may not be granted bail unless the court is of the opinion that there is no significant risk of the defendant committing, while on bail, an offence that would, or would be likely to, cause physical or mental injury to any person other than the defendant.”
- (3) In paragraph 9 (matters to which court is to have regard when taking decisions about granting bail)—
  - (a) after “6A” insert “or of the opinion mentioned in paragraph 6ZA”, and
  - (b) after paragraph (d) insert—

“(e) if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not), would commit an offence while on bail, the risk that the defendant may do so by engaging in conduct that would, or would be likely to, cause physical or mental injury to any person other than the defendant,”.

#### **115 Bail decisions in murder cases to be made by Crown Court judge**

- (1) A person charged with murder may not be granted bail except by order of a judge of the Crown Court.
- (2) Subsections (3) and (4) apply where a person appears or is brought before a magistrates’ court charged with murder.
- (3) A judge of the Crown Court must make a decision about bail in respect of the person as soon as reasonably practicable and, in any event, within the period of 48 hours beginning with the day after the day on which the person appears or is brought before the magistrates’ court.
- (4) The magistrates’ court must, if necessary for the purposes of subsection (3), commit the person to custody to be brought before a judge of the Crown Court.
- (5) For the purposes of subsections (3) and (4), it is immaterial whether the magistrates’ court—
  - (a) sends the person to the Crown Court for trial, or
  - (b) adjourns proceedings under section 52(5) of the [Crime and Disorder Act 1998 \(c. 37\)](#) and remands the person.

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- (6) In this section a reference to a person charged with murder includes a person charged with murder and one or more other offences.
- (7) For the purposes of subsection (3), when calculating the period of 48 hours Saturdays, Sundays, Christmas Day, Good Friday and bank holidays are to be excluded.

### *Unsigned indictments*

## **116 Indictment of offenders**

- (1) In the [Administration of Justice \(Miscellaneous Provisions\) Act 1933 \(c. 36\)](#)—
  - (a) in section 2 (procedure for indictment of offenders), in subsection (1) omit—
    - (i) from “, and where” to “the bill,”, and
    - (ii) from “Provided” to the end,
  - (b) in subsection (3) of that section—
    - (i) after “indictment”, in first place it occurs, insert “has been”, and
    - (ii) omit “has been signed by the proper officer of the court”,
  - (c) after subsection (6) of that section, insert—
    - “(6ZA) Where a bill of indictment is preferred in accordance with subsections (1) and (2), no objection to the indictment may be taken after the commencement of the trial by reason of any failure to observe any rules under subsection (6).
    - (6ZB) For the purposes of subsection (6ZA) the trial commences at the time when a jury is sworn to consider the issue of guilt or whether the accused did the act or made the omission charged, or, if the court accepts a plea of guilty before the time when a jury is sworn, when that plea is accepted.
    - (6ZC) The references in subsection (6ZB) to the time when a jury is sworn include the time when that jury would be sworn but for the making of an order under Part 7 of the Criminal Justice Act 2003.”, and
  - (d) in paragraph 1 of Schedule 2 (consequential adaptations of enactments)—
    - (i) for “respectively references” substitute “reference”, and
    - (ii) omit “and signing”.
- (2) In section 82 of the [Supreme Court Act 1981 \(c. 54\)](#) (duties of officers of Crown Court), in subsection (1) omit “the signing of indictments,”.

### *Detention of terrorist suspects*

## **117 Detention of persons under section 41 of the Terrorism Act 2000**

- (1) Section 36 of the [Terrorism Act 2006 \(c. 11\)](#) (review of terrorism legislation) is amended in accordance with subsections (2) and (3).
- (2) After subsection (2) insert—
  - “(2A) A review under subsection (2) may, in particular, consider whether—

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- (a) the requirements imposed by or under Part 1 or 2, or paragraph 37, of Schedule 8 to the Terrorism Act 2000 (detention of suspected terrorists), and
- (b) the requirements imposed by any relevant code of practice under section 66 of the Police and Criminal Evidence Act 1984 or Article 65 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)),

have been complied with in relation to persons detained under section 41 of the Terrorism Act 2000 pursuant to a warrant of further detention issued under Part 3 of Schedule 8 to that Act.”

(3) In subsection (3) for “That person” substitute “The person appointed under subsection (1)”.

(4) Section 51 of the Police Reform Act 2002 (c. 30) (independent custody visitors for places of detention) is amended in accordance with subsections (5) to (8).

(5) After subsection (1) insert—

“(1A) Every police authority must ensure—

- (a) that the arrangements made by it require independent custody visitors to prepare and submit to it a report of any visit made under the arrangements to a suspected terrorist detainee, and
- (b) that a copy of any report submitted under paragraph (a) is given to the person appointed under section 36(1) of the Terrorism Act 2006 (independent reviewer of terrorism legislation).”

(6) In subsection (3), after paragraph (b) insert—

“(ba) in relation to suspected terrorist detainees, to listen to the audio recordings and view the video recordings (with or without sound) of interviews with those detainees which have taken place during their detention there and which were conducted by a constable;”.

(7) After that subsection insert—

“(3A) The arrangements may include provision for access to the whole or part of an audio or video recording of an interview of the kind mentioned in subsection (3)(ba) to be denied to independent custody visitors if—

- (a) it appears to an officer of or above the rank of inspector that there are grounds for denying access at the time it is requested;
- (b) the grounds are grounds specified for the purposes of paragraph (a) in the arrangements; and
- (c) the procedural requirements imposed by the arrangements in relation to a denial of access to such recordings are complied with.

(3B) Grounds are not to be specified in any arrangements for the purposes of subsection (3A)(a) unless they are grounds for the time being set out for the purposes of this subsection in the code of practice issued by the Secretary of State under subsection (6).”

(8) For subsection (10) substitute—

“(10) In this section—

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**Status:** *This is the original version (as it was originally enacted).*

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“detainee”, in relation to arrangements made under this section, means a person detained in a police station in the police area of the police authority;

“suspected terrorist detainee” means a detainee detained under section 41 of the Terrorism Act 2000.”