Domestic Abuse Act 2021

2021 CHAPTER 17

PART 5

PROTECTION FOR VICTIMS, WITNESSES, ETC IN LEGAL PROCEEDINGS

Special measures

62 Special measures in criminal proceedings for offences involving domestic abuse

(1) Chapter 1 of Part 2 of the Youth Justice and Criminal Evidence Act 1999 (giving of evidence or information for purposes of criminal proceedings: special measures directions in case of vulnerable and intimidated witnesses) is amended as follows.

(2) In section 17 (witnesses eligible for assistance on grounds of fear or distress about testifying)—

(a) in subsection (4), for "a sexual offence or an offence under section 1 or 2 of the Modern Slavery Act 2015" substitute " an offence listed in subsection (4A) ";

(b) after subsection (4) insert—

"(4A) The offences are—

(a) a sexual offence;

(b) an offence under section 1 or 2 of the Modern Slavery Act 2015;

(c) any other offence where it is alleged that the behaviour of the accused amounted to domestic abuse within the meaning of the Domestic Abuse Act 2021 (see section 1 of that Act)."

(3) In section 25(4)(a) (evidence given in private), for "a sexual offence or an offence under section 1 or 2 of the Modern Slavery Act 2015" substitute " an offence listed in section 17(4A) ".

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Commencement Information

I1 S. 62 in force at 19.5.2022 for specified purposes by S.I. 2022/553, regs. 1(2), **2(1)(a)**

63 Special measures in family proceedings: victims of domestic abuse

(1) This section applies where rules of court provide that the court may make a special measures direction in relation to a person ("P") who is a party or witness in family proceedings.

(2) Rules of court must provide that where P is, or is at risk of being, a victim of domestic abuse carried out by a person listed in subsection (3), it is to be assumed that the following matters are likely to be diminished by reason of vulnerability—

(a) the quality of P's evidence;

(b) where P is a party to the proceedings, P's participation in the proceedings.

(3) The persons referred to in subsection (2) are—

(a) a party to the proceedings;

(b) a relative of a party to the proceedings (other than P);

(c) a witness in the proceedings.

(4) Rules of court may provide for an exception to the provision made by virtue of subsection (2) where P does not wish to be deemed to be eligible for the making of a special measures direction by virtue of that subsection.

(5) In this section—

"family proceedings" has the meaning given by section 75(3) of the Courts Act 2003;

"relative" has the meaning given by section 63(1) of the Family Law Act 1996;

"special measures" means such measures as may be specified by rules of court for the purpose of assisting a person to give evidence or participate in proceedings;

"special measures direction" means a direction by the court granting special measures.

Commencement Information

I2 S. 63 in force at 1.10.2021 by S.I. 2021/1038, **reg. 2(d)**

64 Special measures in civil proceedings: victims of domestic abuse etc

(1) Rules of court must make provision enabling the court to make a special measures direction in relation to a person who is a party or witness in civil proceedings where that person—

(a) is, or is at risk of being, a victim of domestic abuse;

(b) is the victim, or alleged victim, of a specified offence.

(2) Rules made by virtue of subsection (1) must, in particular, provide for the court to consider—

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(a) whether—

(i) the quality of the person's evidence, or

(ii) where the person is a party to the proceedings, the person's participation in the proceedings,

is likely to be diminished by reason of vulnerability, and

(b) if so, whether it is necessary to make one or more special measures directions.

(3) For the purposes of this section—

(a) a person is the victim of a specified offence if another person has been convicted of, or given a caution for, the offence;

(b) a person is the alleged victim of a specified offence if another person has been charged with the offence.

(4) In this section—

"civil proceedings" means—

(a) proceedings in the county court,

(b) proceedings in the High Court, other than—

(i) proceedings in the Family Division of the High Court which are business assigned, by or under section 61 of (and Schedule 1 to) the Senior Courts Act 1981, to that Division of the High Court and no other, and

(ii) proceedings in the exercise of its jurisdiction under the Extradition Act 2003, and

(c) proceedings in the civil division of the Court of Appeal;

"special measures" means such measures as may be specified by rules of court for the purpose of assisting a person to give evidence or participate in proceedings;

"special measures direction" means a direction by the court granting special measures;

"specified offence" means an offence which is specified, or of a description specified, in regulations made by the Lord Chancellor.

Commencement Information

I3 S. 64 in force at 14.6.2022 by S.I. 2022/553, regs. 1(2), **4**

Prohibition of cross-examination in person

65 Prohibition of cross-examination in person in family proceedings

In the Matrimonial and Family Proceedings Act 1984, after Part 4A insert—

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"PART 4B

FAMILY PROCEEDINGS: PROHIBITION OF CROSS-EXAMINATION IN PERSON

31Q Prohibition of cross-examination in person: introductory

In this Part—

"family proceedings" means—

(a) proceedings in the family court,

(b) proceedings in the Family Division of the High Court which are business assigned, by or under section 61 of (and Schedule 1 to) the Senior Courts Act 1981, to that Division of the High Court and no other, and

(c) proceedings in the civil division of the Court of Appeal arising out of proceedings within paragraph (a) or (b);

"witness", in relation to any proceedings, includes a party to the proceedings.

31R Prohibition of cross-examination in person: victims of offences

(1) In family proceedings, no party to the proceedings who has been convicted of or given a caution for, or is charged with, a specified offence may cross-examine in person a witness who is the victim, or alleged victim, of that offence.

(2) In family proceedings, no party to the proceedings who is the victim, or alleged victim, of a specified offence may cross-examine in person a witness who has been convicted of or given a caution for, or is charged with, that offence.

(3) Subsections (1) and (2) do not apply to a conviction or caution that is spent for the purposes of the Rehabilitation of Offenders Act 1974, unless evidence in relation to the conviction or caution is admissible in, or may be required in, the proceedings by virtue of section 7(2), (3) or (4) of that Act.

(4) Cross-examination in breach of subsection (1) or (2) does not affect the validity of a decision of the court in the proceedings if the court was not aware of the conviction, caution or charge when the cross-examination took place.

(5) In this section—

"caution" means—

(a) in the case of England and Wales—

(i) a conditional caution given under section 22 of the Criminal Justice Act 2003,

(ii) a youth conditional caution given under section 66A of the Crime and Disorder Act 1998, or

(iii) any other caution given to a person in England and Wales in respect of an offence which, at the time the caution is given, the person has admitted;

(b) in the case of Scotland, anything corresponding to a caution falling within paragraph (a) (however described) which is given to a person in respect of an offence under the law of Scotland;

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(c) in the case of Northern Ireland—

(i) a conditional caution given under section 71 of the Justice Act (Northern Ireland) 2011, or

(ii) any other caution given to a person in Northern Ireland in respect of an offence which, at the time the caution is given, the person has admitted;

"conviction" means—

(a) a conviction by or before a court in England and Wales, Scotland or Northern Ireland;

(b) a conviction in service disciplinary proceedings (in England and Wales, Scotland, Northern Ireland, or elsewhere), including—

(i) in the case of proceedings in respect of a service offence, anything that under section 376(1) and (2) of the Armed Forces Act 2006 (which relates to summary hearings and the Summary Appeal Court) is to be treated as a conviction for the purposes of that Act, and

(ii) in the case of any other service disciplinary proceedings, a finding of guilt in those proceedings;

(c) a finding in any criminal proceedings (including a finding linked with a finding of insanity) that the person concerned has committed an offence or done the act or made the omission charged;

and "convicted" is to be read accordingly;

"service disciplinary proceedings" means—

(a) any proceedings (whether or not before a court) in respect of a service offence (except proceedings before a civilian court within the meaning of the Armed Forces Act 2006);

(b) any proceedings under the Army Act 1955, the Air Force Act 1955, or the Naval Discipline Act 1957 (whether before a court-martial or before any other court or person authorised under any of those Acts to award a punishment in respect of an offence);

(c) any proceedings before a Standing Civilian Court established under the Armed Forces Act 1976;

"service offence" means—

(a) a service offence within the meaning of the Armed Forces Act 2006, or

(b) an SDA offence within the meaning of the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (S.I. 2009/1059);

"specified offence" means an offence which is specified, or of a description specified, in regulations made by the Lord Chancellor.

(6) The following provisions (which deem a conviction of a person discharged not to be a conviction) do not apply for the purposes of this section to a conviction of a person for an offence in respect of which an order has been made discharging the person absolutely or conditionally—

(a) section 14 of the Powers of Criminal Courts (Sentencing) Act 2000;

(b) section 82 of the Sentencing Code;

(c) section 187 of the Armed Forces Act 2006 or any corresponding earlier enactment.

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(7) For the purposes of this section "offence" includes an offence under a law that is no longer in force.

31S Prohibition of cross-examination in person: persons protected by injunctions etc

(1) In family proceedings, no party to the proceedings against whom an on-notice protective injunction is in force may cross-examine in person a witness who is protected by the injunction.

(2) In family proceedings, no party to the proceedings who is protected by an on-notice protective injunction may cross-examine in person a witness against whom the injunction is in force.

(3) Cross-examination in breach of subsection (1) or (2) does not affect the validity of a decision of the court in the proceedings if the court was not aware of the protective injunction when the cross-examination took place.

(4) In this section "protective injunction" means an order, injunction or interdict specified, or of a description specified, in regulations made by the Lord Chancellor.

(5) For the purposes of this section, a protective injunction is an "on-notice" protective injunction if—

(a) the court is satisfied that there has been a hearing at which the person against whom the protective injunction is in force asked, or could have asked, for the injunction to be set aside or varied, or

(b) the protective injunction was made at a hearing of which the court is satisfied that both the person who applied for it and the person against whom it is in force had notice.

31T Prohibition of cross-examination in person: evidence of domestic abuse

(1) In family proceedings, where specified evidence is adduced that a person who is a witness has been the victim of domestic abuse carried out by a party to the proceedings, that party to the proceedings may not cross-examine the witness in person.

(2) In family proceedings, where specified evidence is adduced that a person who is a party to the proceedings has been the victim of domestic abuse carried out by a witness, that party may not cross-examine the witness in person.

(3) In this section—

"domestic abuse" has the meaning given by section 1 of the Domestic Abuse Act 2021;

"specified evidence" means evidence specified, or of a description specified, in regulations made by the Lord Chancellor.

(4) Regulations under subsection (3) may provide that any evidence which satisfies the court that domestic abuse, or domestic abuse of a specified description, has occurred is specified evidence for the purposes of this section.

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31U **Direction for prohibition of cross-examination in person: other cases**

(1) In family proceedings, the court may give a direction prohibiting a party to the proceedings from cross-examining (or continuing to cross-examine) a witness in person if—

(a) none of sections 31R to 31T operates to prevent the party from cross-examining the witness, and

(b) it appears to the court that—

(i) the quality condition or the significant distress condition is met, and

(ii) it would not be contrary to the interests of justice to give the direction.

(2) The "quality condition" is met if the quality of evidence given by the witness on cross-examination—

(a) is likely to be diminished if the cross-examination (or continued cross-examination) is conducted by the party in person, and

(b) would be likely to be improved if a direction were given under this section.

(3) The "significant distress condition" is met if—

(a) the cross-examination (or continued cross-examination) of the witness by the party in person would be likely to cause significant distress to the witness or the party, and

(b) that distress is likely to be more significant than would be the case if the witness were cross-examined other than by the party in person.

(4) A direction under this section may be made by the court—

(a) on an application made by a party to the proceedings, or

(b) of its own motion.

(5) In determining whether the quality condition or the significant distress condition is met in the case of a witness or party, the court must have regard to, among other things—

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

(b) any views expressed by the party as to whether or not the party is content to cross-examine the witness in person;

(c) the nature of the questions likely to be asked, having regard to the issues in the proceedings;

(d) any behaviour by the party in relation to the witness in respect of which the court is aware that a finding of fact has been made in the proceedings or in any other proceedings;

(e) any behaviour by the witness in relation to the party in respect of which the court is aware that a finding of fact has been made in the proceedings or in any other proceedings;

(f) any behaviour by the party at any stage of the proceedings, both generally and in relation to the witness;

(g) any behaviour by the witness at any stage of the proceedings, both generally and in relation to the party;

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(h) any relationship (of whatever nature) between the witness and the party.

(6) Any reference in this section to the quality of a witness's evidence is to its quality in terms of completeness, coherence and accuracy.

(7) For this purpose "coherence" refers to a witness's ability in giving evidence to give answers which—

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

(b) can be understood, both individually and collectively.

31V Directions under section 31U: supplementary

(1) A direction under section 31U has binding effect from the time it is made until the witness in relation to whom it applies is discharged.

(2) But the court may revoke a direction under section 31U before the witness is discharged, if it appears to the court to be in the interests of justice to do so, either—

(a) on an application made by a party to the proceedings, or

(b) of its own motion.

(3) The court may revoke a direction under section 31U on an application made by a party to the proceedings only if there has been a material change of circumstances since—

(a) the direction was given, or

(b) if a previous application has been made by a party to the proceedings, the application (or the last application) was determined.

(4) The court must state its reasons for—

(a) giving a direction under section 31U;

(b) refusing an application for a direction under section 31U;

(c) revoking a direction under section 31U;

(d) refusing an application for the revocation of a direction under section 31U.

31W Alternatives to cross-examination in person

(1) This section applies where a party to family proceedings is prevented from cross-examining a witness in person by virtue of any of sections 31R to 31U.

(2) The court must consider whether (ignoring this section) there is a satisfactory alternative means—

(a) for the witness to be cross-examined in the proceedings, or

(b) of obtaining evidence that the witness might have given under cross-examination in the proceedings.

(3) If the court decides that there is not, the court must—

(a) invite the party to the proceedings to arrange for a qualified legal representative to act for the party for the purpose of cross-examining the witness, and

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(b) require the party to the proceedings to notify the court, by the end of a period specified by the court, of whether a qualified legal representative is to act for the party for that purpose.

(4) Subsection (5) applies if, by the end of the period specified under subsection (3)(b), either—

(a) the party has notified the court that no qualified legal representative is to act for the party 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 qualified legal representative is to act for the party for the purpose of cross-examining the witness.

(5) The court must consider whether it is necessary in the interests of justice for the witness to be cross-examined by a qualified legal representative appointed by the court to represent the interests of the party.

(6) If the court decides that it is, the court must appoint a qualified legal representative (chosen by the court) to cross-examine the witness in the interests of the party.

(7) A qualified legal representative appointed by the court under subsection (6) is not responsible to the party.

(8) For the purposes of this section—

(a) a reference to cross-examination includes a reference to continuing to conduct cross-examination;

(b) "qualified legal representative" means 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 (within the meaning of that Act) in family proceedings.

31X Costs of legal representatives appointed under section 31W(6)

(1) The Lord Chancellor may by regulations make provision for the payment out of central funds of sums in respect of—

(a) fees or costs properly incurred by a qualified legal representative appointed under section 31W(6), and

(b) expenses properly incurred in providing such a person with evidence or other material in connection with the appointment.

(2) The regulations may provide for sums payable under subsection (1) to be determined by the Lord Chancellor or such other person as the regulations may specify.

(3) The regulations may provide for sums payable under subsection (1)—

(a) to be such amounts as are specified in the regulations;

(b) to be calculated in accordance with—

(i) a rate or scale specified in the regulations, or

(ii) other provision made by or under the regulations.

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31Y Guidance for legal representatives appointed under section 31W(6)

(1) The Lord Chancellor may issue guidance in connection with the role which a qualified legal representative appointed under section 31W(6) in connection with any family proceedings is to play in the proceedings, including (among other things) guidance about the effect of section 31W(7).

(2) A qualified legal representative appointed under section 31W(6) must have regard to any guidance issued under this section.

(3) The Lord Chancellor may from time to time revise any guidance issued under this section.

(4) The Lord Chancellor must publish—
- (a) any guidance issued under this section, and
- (b) any revisions of that guidance.

31Z Regulations under Part 4B

(1) Any power of the Lord Chancellor to make regulations under this Part—
- (a) is exercisable by statutory instrument,
- (b) includes power to make different provision for different purposes, and
- (c) includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision.

(2) A statutory instrument containing regulations under this Part is subject to annulment in pursuance of a resolution of either House of Parliament."

Commencement Information

I4 S. 65 in force at 21.7.2022 by S.I. 2022/840, **regs. 1(2)**, 2(a) (with reg. 3)

66 Prohibition of cross-examination in person in civil proceedings

In the Courts Act 2003, after Part 7 insert—

"PART 7A

CIVIL PROCEEDINGS: PROHIBITION OF CROSS-EXAMINATION IN PERSON

85E Prohibition of cross-examination in person: introductory

In this Part—

"civil proceedings" means—
- (a) proceedings in the county court,
- (b) proceedings in the High Court, other than—
  - (i) proceedings in the Family Division of the High Court which are business assigned, by or under section 61 of (and

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Schedule 1 to) the Senior Courts Act 1981, to that Division of the High Court and no other, and

(ii) proceedings in the exercise of its jurisdiction under the Extradition Act 2003, and

(c) proceedings in the civil division of the Court of Appeal arising out of civil proceedings within paragraph (a) or (b);

"witness", in relation to any proceedings, includes a party to the proceedings.

85F **Prohibition of cross-examination in person: victims of offences**

(1) In civil proceedings, no party to the proceedings who has been convicted of, or given a caution for, a specified offence may cross-examine in person a witness who is the victim of that offence.

(2) In civil proceedings, no party to the proceedings who is the victim of a specified offence may cross-examine in person a witness who has been convicted of, or given a caution for, that offence.

(3) Subsections (1) and (2) do not apply to a conviction or caution that is spent for the purposes of the Rehabilitation of Offenders Act 1974, unless evidence in relation to the conviction or caution is admissible in, or may be required in, the proceedings by virtue of section 7(2), (3) or (4) of that Act.

(4) Cross-examination in breach of subsection (1) or (2) does not affect the validity of a decision of the court in the proceedings if the court was not aware of the conviction or caution when the cross-examination took place.

(5) In this section—

"caution" means—

(a) in the case of England and Wales—

(i) a conditional caution given under section 22 of the Criminal Justice Act 2003,

(ii) a youth conditional caution given under section 66A of the Crime and Disorder Act 1998, or

(iii) any other caution given to a person in England and Wales in respect of an offence which, at the time the caution is given, the person has admitted;

(b) in the case of Scotland, anything corresponding to a caution falling within paragraph (a) (however described) which is given to a person in respect of an offence under the law of Scotland;

(c) in the case of Northern Ireland—

(i) a conditional caution given under section 71 of the Justice Act (Northern Ireland) 2011, or

(ii) any other caution given to a person in Northern Ireland in respect of an offence which, at the time the caution is given, the person has admitted;

"conviction" means—

(a) a conviction by or before a court in England and Wales, Scotland or Northern Ireland;

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(b) a conviction in service disciplinary proceedings (in England and Wales, Scotland, Northern Ireland, or elsewhere), including—

(i) in the case of proceedings in respect of a service offence, anything that under section 376(1) and (2) of the Armed Forces Act 2006 (which relates to summary hearings and the Summary Appeal Court) is to be treated as a conviction for the purposes of that Act, and

(ii) in the case of any other service disciplinary proceedings, a finding of guilt in those proceedings;

(c) a finding in any criminal proceedings (including a finding linked with a finding of insanity) that the person concerned has committed an offence or done the act or made the omission charged;

and "convicted" is to be read accordingly;

"service disciplinary proceedings" means—

(a) any proceedings (whether or not before a court) in respect of a service offence (except proceedings before a civilian court within the meaning of the Armed Forces Act 2006);

(b) any proceedings under the Army Act 1955, the Air Force Act 1955, or the Naval Discipline Act 1957 (whether before a court-martial or before any other court or person authorised under any of those Acts to award a punishment in respect of an offence);

(c) any proceedings before a Standing Civilian Court established under the Armed Forces Act 1976;

"service offence" means—

(a) a service offence within the meaning of the Armed Forces Act 2006, or

(b) an SDA offence within the meaning of the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (S.I. 2009/1059);

"specified offence" means an offence which is specified, or of a description specified, in regulations made by the Lord Chancellor.

(6) The following provisions (which deem a conviction of a person discharged not to be a conviction) do not apply for the purposes of this section to a conviction of a person for an offence in respect of which an order has been made discharging the person absolutely or conditionally—

(a) section 14 of the Powers of Criminal Courts (Sentencing) Act 2000;

(b) section 82 of the Sentencing Code;

(c) section 187 of the Armed Forces Act 2006 or any corresponding earlier enactment.

(7) For the purposes of this section "offence" includes an offence under a law that is no longer in force.

85G Prohibition of cross-examination in person: persons protected by injunctions etc

(1) In civil proceedings, no party to the proceedings against whom an on-notice protective injunction is in force may cross-examine in person a witness who is protected by the injunction.

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(2) In civil proceedings, no party to the proceedings who is protected by an on-notice protective injunction may cross-examine in person a witness against whom the injunction is in force.

(3) Cross-examination in breach of subsection (1) or (2) does not affect the validity of a decision of the court in the proceedings if the court was not aware of the protective injunction when the cross-examination took place.

(4) In this section "protective injunction" means an order, injunction or interdict specified, or of a description specified, in regulations made by the Lord Chancellor.

(5) For the purposes of this section, a protective injunction is an "on-notice" protective injunction if—

(a) the court is satisfied that there has been a hearing at which the person against whom the protective injunction is in force asked, or could have asked, for the injunction to be set aside or varied, or

(b) the protective injunction was made at a hearing of which the court is satisfied that both the person who applied for it and the person against whom it is in force had notice.

85H Prohibition of cross-examination in person: evidence of domestic abuse

(1) In civil proceedings, where specified evidence is adduced that a person who is a witness has been the victim of domestic abuse carried out by a party to the proceedings, that party to the proceedings may not cross-examine the witness in person.

(2) In civil proceedings, where specified evidence is adduced that a person who is a party to the proceedings has been the victim of domestic abuse carried out by a witness, that party may not cross-examine the witness in person.

(3) In this section—

"domestic abuse" has the meaning given by section 1 of the Domestic Abuse Act 2021;

"specified evidence" means evidence specified, or of a description specified, in regulations made by the Lord Chancellor.

(4) Regulations under subsection (3) may provide that any evidence which satisfies the court that domestic abuse, or domestic abuse of a specified description, has occurred is specified evidence for the purposes of this section.

85I Direction for prohibition of cross-examination in person: other cases

(1) In civil proceedings, the court may give a direction prohibiting a party to the proceedings from cross-examining (or continuing to cross-examine) a witness in person if—

(a) none of sections 85F to 85H operates to prevent the party from cross-examining the witness, and

(b) it appears to the court that—

(i) the quality condition or the significant distress condition is met, and

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(ii) it would not be contrary to the interests of justice to give the direction.

(2) The "quality condition" is met if the quality of evidence given by the witness on cross-examination—

(a) is likely to be diminished if the cross-examination (or continued cross-examination) is conducted by the party in person, and

(b) would be likely to be improved if a direction were given under this section.

(3) The "significant distress condition" is met if—

(a) the cross-examination (or continued cross-examination) of the witness by the party in person would be likely to cause significant distress to the witness or the party, and

(b) that distress is likely to be more significant than would be the case if the witness were cross-examined other than by the party in person.

(4) A direction under this section may be made by the court—

(a) on an application made by a party to the proceedings, or

(b) of its own motion.

(5) In determining whether the quality condition or the significant distress condition is met in the case of a witness or party, the court must have regard to, among other things—

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

(b) any views expressed by the party as to whether or not the party is content to cross-examine the witness in person;

(c) the nature of the questions likely to be asked, having regard to the issues in the proceedings;

(d) any charge of which the court is aware in respect of a specified offence alleged to have been committed by the party in relation to the witness;

(e) any charge of which the court is aware in respect of a specified offence alleged to have been committed by the witness in relation to the party;

(f) any behaviour by the party in relation to the witness in respect of which the court is aware that a finding of fact has been made in the proceedings or in any other proceedings;

(g) any behaviour by the witness in relation to the party in respect of which the court is aware that a finding of fact has been made in the proceedings or in any other proceedings;

(h) any behaviour by the party at any stage of the proceedings, both generally and in relation to the witness;

(i) any behaviour by the witness at any stage of the proceedings, both generally and in relation to the party;

(j) any relationship (of whatever nature) between the witness and the party.

(6) In subsection (5)(d) and (e) "specified offence" means an offence that is a specified offence for the purposes of section 85F.

(7) Any reference in this section to the quality of a witness's evidence is to its quality in terms of completeness, coherence and accuracy.

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(8) For this purpose "coherence" refers to a witness's ability in giving evidence to give answers which—
  (a) address the questions put to the witness, and
  (b) can be understood, both individually and collectively.

85J Directions under section 85I: supplementary

(1) A direction under section 85I has binding effect from the time it is made until the witness in relation to whom it applies is discharged.

(2) But the court may revoke a direction under section 85I before the witness is discharged, if it appears to the court to be in the interests of justice to do so, either—
  (a) on an application made by a party to the proceedings, or
  (b) of its own motion.

(3) The court may revoke a direction under section 85I on an application made by a party to the proceedings only if there has been a material change of circumstances since—
  (a) the direction was given, or
  (b) if a previous application has been made by a party to the proceedings, the application (or the last application) was determined.

(4) The court must state its reasons for—
  (a) giving a direction under section 85I;
  (b) refusing an application for a direction under section 85I;
  (c) revoking a direction under section 85I;
  (d) refusing an application for the revocation of a direction under section 85I.

85K Alternatives to cross-examination in person

(1) This section applies where a party to civil proceedings is prevented from cross-examining a witness in person by virtue of any of sections 85F to 85I.

(2) The court must consider whether (ignoring this section) there is a satisfactory alternative means—
  (a) for the witness to be cross-examined in the proceedings, or
  (b) of obtaining evidence that the witness might have given under cross-examination in the proceedings.

(3) If the court decides that there is not, the court must—
  (a) invite the party to the proceedings to arrange for a qualified legal representative to act for the party for the purpose of cross-examining the witness, and
  (b) require the party to the proceedings to notify the court, by the end of a period specified by the court, of whether a qualified legal representative is to act for the party for that purpose.

(4) Subsection (5) applies if, by the end of the period specified under subsection (3)(b), either—

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(a) the party has notified the court that no qualified legal representative is to act for the party 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 qualified legal representative is to act for the party for the purpose of cross-examining the witness.

(5) The court must consider whether it is necessary in the interests of justice for the witness to be cross-examined by a qualified legal representative appointed by the court to represent the interests of the party.

(6) If the court decides that it is, the court must appoint a qualified legal representative (chosen by the court) to cross-examine the witness in the interests of the party.

(7) A qualified legal representative appointed by the court under subsection (6) is not responsible to the party.

(8) For the purposes of this section—

(a) a reference to cross-examination includes a reference to continuing to conduct cross-examination;

(b) "qualified legal representative" means 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 (within the meaning of that Act) in civil proceedings.

85L Costs of legal representatives appointed under section 85K(6)

(1) The Lord Chancellor may by regulations make provision for the payment out of central funds of sums in respect of—

(a) fees or costs properly incurred by a qualified legal representative appointed under section 85K(6), and

(b) expenses properly incurred in providing such a person with evidence or other material in connection with the appointment.

(2) The regulations may provide for sums payable under subsection (1) to be determined by the Lord Chancellor or such other person as the regulations may specify.

(3) The regulations may provide for sums payable under subsection (1)—

(a) to be such amounts as are specified in the regulations;

(b) to be calculated in accordance with—

(i) a rate or scale specified in the regulations, or

(ii) other provision made by or under the regulations.

85M Guidance for legal representatives appointed under section 85K(6)

(1) The Lord Chancellor may issue guidance in connection with the role which a qualified legal representative appointed under section 85K(6) in connection with any civil proceedings is to play in the proceedings, including (among other things) guidance about the effect of section 85K(7).

(2) A qualified legal representative appointed under section 85K(6) must have regard to any guidance issued under this section.

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(3) The Lord Chancellor may from time to time revise any guidance issued under this section.

(4) The Lord Chancellor must publish—

(a) any guidance issued under this section, and

(b) any revisions of that guidance.

85N **Regulations under Part 7A**

Regulations under this Part may make different provision for different purposes."

Commencement Information

I5 S. 66 in force at 21.7.2022 by S.I. 2022/840, **regs. 1(2)**, 2(b) (with reg. 3)

Orders under section 91(14) of the Children Act 1989

67 Orders under section 91(14) of the Children Act 1989

(1) The Children Act 1989 is amended as follows.

(2) In section 91 (effect and duration of orders etc.), at the end of subsection (14) insert—

"For further provision about orders under this subsection, see section 91A (section 91(14) orders: further provision)."

(3) After section 91 insert—

"**91A Section 91(14) orders: further provision**

(1) This section makes further provision about orders under section 91(14) (referred to in this section as "section 91(14) orders").

(2) The circumstances in which the court may make a section 91(14) order include, among others, where the court is satisfied that the making of an application for an order under this Act of a specified kind by any person who is to be named in the section 91(14) order would put—

(a) the child concerned, or

(b) another individual ("the relevant individual"),

at risk of harm.

(3) In the case of a child or other individual who has reached the age of eighteen, the reference in subsection (2) to "harm" is to be read as a reference to ill-treatment or the impairment of physical or mental health.

(4) Where a person who is named in a section 91(14) order applies for leave to make an application of a specified kind, the court must, in determining whether to grant leave, consider whether there has been a material change of circumstances since the order was made.

(5) A section 91(14) order may be made by the court—

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(a) on an application made—

(i) by the relevant individual;

(ii) by or on behalf of the child concerned;

(iii) by any other person who is a party to the application being disposed of by the court;

(b) of its own motion.

(6) In this section, "the child concerned" means the child referred to in section 91(14)."

Commencement Information

I6 S. 67 in force at 19.5.2022 by S.I. 2022/553, regs. 1(2), **2(1)(b)**

Changes to legislation:
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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 49A49B and cross-heading inserted by 2024 c. 21 s. 20(2)
- s. 56(4)(c) inserted by 2024 c. 21 s. 20(4)
- s. 87(6)(aa) inserted by 2024 c. 21 s. 20(5)