



# Courts Act 2003

## 2003 CHAPTER 39

### [<sup>F1</sup>PART 7A

#### CIVIL PROCEEDINGS: PROHIBITION OF CROSS-EXAMINATION IN PERSON

#### [<sup>F1</sup>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
    - (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.

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**Changes to legislation:** Courts Act 2003, Section 85I is up to date with all changes known to be in force on or before 22 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) View outstanding changes

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- (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.
- (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.]

#### Textual Amendments

**F1** Pt. 7A inserted (21.7.2022) by [Domestic Abuse Act 2021 \(c. 17\)](#), ss. 66, 90(6); S.I. 2022/840, regs. 1(2), 2(b) (with [reg. 3](#))

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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. 75(6) inserted by [2022 c. 35 Sch. 4 para. 3\(2\)](#)
- s. 76(2B) inserted by [2010 c. 26 Sch. 3 para. 14](#) (This amendment not applied to [legislation.gov.uk](#). Sch. 3 Pt. 2 repealed (4.9.2013) without ever being in force by [2013 c. 22](#), s. 17(4) ; S.I. 2013/2200 art. 2(a))
- s. 81(6) inserted by [2022 c. 35 Sch. 4 para. 3\(3\)](#)
- s. 85EA(5) words substituted by [2022 c. 32 Sch. 11 para. 29](#)
- Sch. 5 para. 13(1)(ca) inserted by [2013 c. 22 s. 26\(3\)](#)

**Commencement Orders yet to be applied to the Courts Act 2003**

Commencement Orders bringing provisions within this Act into force:

- [S.I. 2005/547 art. 2](#) commences ([2003 c. 39](#))