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Youth Justice and Criminal Evidence Act 1999

1999 CHAPTER 23

PART II

GIVING OF EVIDENCE OR INFORMATION FOR PURPOSES OF CRIMINAL PROCEEDINGS

CHAPTER II

PROTECTION OF WITNESSES FROM CROSS-EXAMINATION BY ACCUSED IN PERSON

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

General prohibitions

34 Complainants in proceedings for sexual offences.

No person charged with a sexual offence may in any criminal proceedings cross-examine in person a witness who is the complainant, either—

- (a) in connection with that offence, or
- (b) in connection with any other offence (of whatever nature) with which that person is charged in the proceedings.

Commencement Information

- II** S. 34 wholly in force at 4.9.2000; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 34 in force at 4.9.2000 by S.I. 2000/2091, art. 2(a)

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35 Child complainants and other child witnesses.

- (1) No person charged with an offence to which this section applies may in any criminal proceedings cross-examine in person a protected witness, either—
- (a) in connection with that offence, or
 - (b) in connection with any other offence (of whatever nature) with which that person is charged in the proceedings.
- (2) For the purposes of subsection (1) a “protected witness” is a witness who—
- (a) either is the complainant or is alleged to have been a witness to the commission of the offence to which this section applies, and
 - (b) either is a child or falls to be cross-examined after giving evidence in chief (whether wholly or in part)—
 - (i) by means of a video recording made (for the purposes of section 27) at a time when the witness was a child, or
 - (ii) in any other way at any such time.
- (3) The offences to which this section applies are—
- (a) any offence under—
 - ^{F1}(i)
 - ^{F1}(ii)
 - ^{F1}(iii)
 - ^{F1}(iv)
 - ^{F2}(iva) any of sections 33 to 36 of the Sexual Offences Act 1956,]
 - (v) the ^{M1}Protection of Children Act 1978; [^{F3} or
 - (vi) Part 1 of the Sexual Offences Act 2003 [^{F4} or any relevant superseded enactment];]
 - (b) kidnapping, false imprisonment or an offence under section 1 or 2 of the ^{M2}Child Abduction Act 1984;
 - (c) any offence under section 1 of the ^{M3}Children and Young Persons Act 1933;
 - (d) any offence (not within any of the preceding paragraphs) which involves an assault on, or injury or a threat of injury to, any person.
- ^{F5}(3A) In subsection (3)(a)(vi) “relevant superseded enactment” means—
- (a) any of sections 1 to 32 of the Sexual Offences Act 1956;
 - (b) the Indecency with Children Act 1960;
 - (c) the Sexual Offences Act 1967;
 - (d) section 54 of the Criminal Law Act 1977.]
- (4) In this section “child” means—
- (a) where the offence falls within subsection (3)(a), a person under the age of 17; or
 - (b) where the offence falls within subsection (3)(b), (c) or (d), a person under the age of 14.
- (5) For the purposes of this section “witness” includes a witness who is charged with an offence in the proceedings.

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Textual Amendments

- F1** S. 35(3)(a)(i)-(iv) repealed (1.5.2004) by [Sexual Offences Act 2003 \(c. 42\)](#), s. 141, [Sch. 7](#); S.I. 2004/874, art. 2
- F2** S. 35(3)(a)(iva) inserted (retrospective to 1.5.2004) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), [Sch. 26 paras. 36\(2\)\(a\)](#), 38
- F3** S. 35(3)(a)(vi) and preceding word inserted (1.5.2004) by [Sexual Offences Act 2003 \(c. 42\)](#), s. 141, [Sch. 6 para. 41\(2\)](#); S.I. 2004/874, art. 2
- F4** Words in s. 35(3)(a)(vi) inserted (retrospective to 1.5.2004) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), [Sch. 26 paras. 36\(2\)\(b\)](#), 38
- F5** S. 35(3A) inserted (retrospective to 1.5.2004) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), [Sch. 26 paras. 36\(3\)](#), 38

Commencement Information

- I2** S. 35 wholly in force at 4.9.2000; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 35 in force at 4.9.2000 by [S.I. 2000/2091](#), [art. 2\(b\)](#)

Marginal Citations

- M1** 1978 c. 37.
M2 1984 c. 37.
M3 1933 c. 12.

Prohibition imposed by court

36 Direction prohibiting accused from cross-examining particular witness.

- (1) This section applies where, in a case where neither of sections 34 and 35 operates to prevent an accused in any criminal proceedings from cross-examining a witness in person—
- the prosecutor makes an application for the court to give a direction under this section in relation to the witness, or
 - the court of its own motion raises the issue whether such a direction should be given.
- (2) If it appears to the court—
- that the quality of evidence given by the witness on cross-examination—
 - is likely to be diminished if the cross-examination (or further cross-examination) is conducted by the accused in person, and
 - would be likely to be improved if a direction were given under this section, and
 - that it would not be contrary to the interests of justice to give such a direction, the court may give a direction prohibiting the accused from cross-examining (or further cross-examining) the witness in person.
- (3) In determining whether subsection (2)(a) applies in the case of a witness the court must have regard, in particular, to—
- any views expressed by the witness as to whether or not the witness is content to be cross-examined by the accused in person;
 - the nature of the questions likely to be asked, having regard to the issues in the proceedings and the defence case advanced so far (if any);

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- (c) any behaviour on the part of the accused at any stage of the proceedings, both generally and in relation to the witness;
 - (d) any relationship (of whatever nature) between the witness and the accused;
 - (e) whether any person (other than the accused) is or has at any time been charged in the proceedings with a sexual offence or an offence to which section 35 applies, and (if so) whether section 34 or 35 operates or would have operated to prevent that person from cross-examining the witness in person;
 - (f) any direction under section 19 which the court has given, or proposes to give, in relation to the witness.
- (4) For the purposes of this section—
- (a) “witness”, in relation to an accused, does not include any other person who is charged with an offence in the proceedings; and
 - (b) any reference to the quality of a witness’s evidence shall be construed in accordance with section 16(5).

Commencement Information

- I3** S. 36 wholly in force at 24.7.2002; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 36 in force in so far as not already in force at 24.7.2002 by [S.I. 2002/1739](#), [art. 2\(c\)](#)

37 Further provisions about directions under section 36.

- (1) Subject to subsection (2), a direction has binding effect from the time it is made until the witness to whom it applies is discharged.
- In this section “direction” means a direction under section 36.
- (2) The court may discharge a direction if it appears to the court to be in the interests of justice to do so, and may do so either—
- (a) on an application made by a party to the proceedings, if there has been a material change of circumstances since the relevant time, or
 - (b) of its own motion.
- (3) In subsection (2) “the relevant time” means—
- (a) the time when the direction was given, or
 - (b) if a previous application has been made under that subsection, the time when the application (or last application) was made.
- (4) The court must state in open court its reasons for—
- (a) giving, or
 - (b) refusing an application for, or for the discharge of, or
 - (c) discharging,
- a direction and, if it is a magistrates’ court, must cause them to be entered in the register of its proceedings.
- (5) Rules of court may make provision—
- (a) for uncontested applications to be determined by the court without a hearing;
 - (b) for preventing the renewal of an unsuccessful application for a direction except where there has been a material change of circumstances;

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- (c) for expert evidence to be given in connection with an application for, or for discharging, a direction;
- (d) 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, a party to the proceedings.

Commencement Information

- I4** S. 37 wholly in force at 24.7.2002; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 37 in force in so far as not already in force at 24.7.2002 by [S.I. 2002/1739](#), [art. 2\(c\)](#)

Cross-examination on behalf of accused

38 Defence representation for purposes of cross-examination.

- (1) This section applies where an accused is prevented from cross-examining a witness in person by virtue of section 34, 35 or 36.
- (2) Where it appears to the court that this section applies, it must—
 - (a) invite the accused to arrange for a legal representative to act for him for the purpose of cross-examining the witness; and
 - (b) require the accused to notify the court, by the end of such period as it may specify, whether a legal representative is to act for him for that purpose.
- (3) If by the end of the period mentioned in subsection (2)(b) either—
 - (a) the accused has notified the court that no legal representative is to act for him 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 legal representative is to so act,the court must consider whether it is necessary in the interests of justice for the witness to be cross-examined by a legal representative appointed to represent the interests of the accused.
- (4) If the court decides that it is necessary in the interests of justice for the witness to be so cross-examined, the court must appoint a qualified legal representative (chosen by the court) to cross-examine the witness in the interests of the accused.
- (5) A person so appointed shall not be responsible to the accused.
- (6) Rules of court may make provision—
 - (a) as to the time when, and the manner in which, subsection (2) is to be complied with;
 - (b) in connection with the appointment of a legal representative under subsection (4), and in particular for securing that a person so appointed is provided with evidence or other material relating to the proceedings.
- (7) Rules of court made in pursuance of subsection (6)(b) may make provision for the application, with such modifications as are specified in the rules, of any of the provisions of—
 - (a) Part I of the ^{M4}Criminal Procedure and Investigations Act 1996 (disclosure of material in connection with criminal proceedings), or

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(b) the ^{M5}Sexual Offences (Protected Material) Act 1997.

(8) For the purposes of this section—

- (a) any reference to cross-examination includes (in a case where a direction is given under section 36 after the accused has begun cross-examining the witness) a reference to further cross-examination; and
- (b) “qualified legal representative” means a legal representative who has a right of audience (within the meaning of the ^{M6}Courts and Legal Services Act 1990) in relation to the proceedings before the court.

Commencement Information

I5 S. 38 wholly in force at 4.9.2000; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 38 in force at 4.9.2000 by [S.I. 2000/2091](#), [art. 2\(c\)](#)

Marginal Citations

M4 1996 c. 25.
M5 1997 c. 39.
M6 1990 c. 41.

39 Warning to jury.

- (1) Where on a trial on indictment an accused is prevented from cross-examining a witness in person by virtue of section 34, 35 or 36, the judge must give the jury such warning (if any) as the judge considers necessary to ensure that the accused is not prejudiced—
 - (a) by any inferences that might be drawn from the fact that the accused has been prevented from cross-examining the witness in person;
 - (b) where the witness has been cross-examined by a legal representative appointed under section 38(4), by the fact that the cross-examination was carried out by such a legal representative and not by a person acting as the accused’s own legal representative.
- (2) Subsection (8)(a) of section 38 applies for the purposes of this section as it applies for the purposes of section 38.

Commencement Information

I6 S. 39 wholly in force at 4.9.2000; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 39 in force at 4.9.2000 by [S.I. 2000/2091](#), [art. 2\(d\)](#)

40 Funding of defence representation.

- (1) In section 19(3) of the ^{M7}Prosecution of Offences Act 1985 (regulations authorising payments out of central funds), after paragraph (d) there shall be inserted—
 - “(e) to cover the proper fee or costs of a legal representative appointed under section 38(4) of the Youth Justice and Criminal Evidence Act 1999 (defence representation for purposes of cross-examination) and any expenses properly incurred in providing such a person with evidence or other material in connection with his appointment.”

^{F6}(2)

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Textual Amendments

- F6** S. 40(2) repealed (2.4.2001) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 para. 7(2), 36(9)); S.I. 2001/916, **art. 3(b)** (with Sch. 2 para. 2)

Commencement Information

- I7** S. 40 wholly in force at 4.9.2000; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes and s. 40(1) in force at Royal Assent, see s. 68(4)(b)(c); s. 40 in force at 4.9.2000 by S.I. 2000/2091, **art. 2(e)**

Marginal Citations

- M7** 1985 c. 23.

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