

YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part II: Giving of evidence or information for purposes of criminal proceedings

Chapter IV: Reporting restrictions

Sections 49, 50, 51 and 52: Offences where reporting restrictions not complied with and defences to the offences

178. **Section 49** sets out the summary offences created by the new reporting restrictions and the penalties which may be imposed on conviction. Sections 49 and 51 specify who can commit the offences. Section 51 provides for the separate prosecution of individuals who are involved in the commission by a corporate body of an offence against section 49. The restrictions relating to offences or proceedings in England and Wales or Northern Ireland, or to armed forces offences or proceedings, will be enforceable throughout the United Kingdom.
179. **Section 50** sets out the defences that can be relied on if a publisher or broadcaster is charged with one of the offences under section 49. First, it is a defence to all the offences under section 49 that the person charged did not know or suspect (or have reason to suspect) that the publication included something protected by a reporting restriction.
180. In the case of an offence under section 49 for a breach of section 44(2), it will be a defence to prove that the person charged was not aware, did not suspect or had no reason to suspect, that a criminal investigation had begun when the information was published/broadcast. There is another defence if the breach of section 44(2) involved reporting information about a suspected victim or witness of any offence other than a sexual offence: to satisfy the court that the public interest demanded publication of the information and, because of that, the reporting restriction was substantial and unreasonable. A list of factors to be taken into account in an assessment of where the public interest lies in such situations is provided in section 52.
181. **Section 50** also provides that it will be a defence for a person charged with a breach of section 44(2) to show that written consent to the publication of the material in question was obtained. If the person protected by the restriction is aged 16 or 17, he can give consent himself. If he is under 16, someone with appropriate responsibility for his welfare will be able to give consent. The appropriate person can only give written consent after having been reminded, in writing, to consider the welfare of the child. Once given, the notice can be revoked before publication by anyone else with appropriate responsibility for the child or by the child himself.
182. A defence based on such a waiver is not available in respect of reporting information about complainants or witnesses to sexual offences if they are under the age of

*These notes refer to the Youth Justice and Criminal Evidence
Act 1999 (c.23) which received Royal Assent on 27 July 1999*

16. Waivers cannot be given by appropriate adults who are themselves accused of the alleged offence (*subsection (13)*).
183. The types of publication caught by these provisions are described in section 63(1) and include written reports (including those available on the internet), speeches, television broadcasts (whether analogue or digital) and any other type of communication addressed to the public.