



# Coroners and Justice Act 2009

## 2009 CHAPTER 25

### PART 3

#### CRIMINAL EVIDENCE, INVESTIGATIONS AND PROCEDURE

#### CHAPTER 1

##### ANONYMITY IN INVESTIGATIONS

#### 74 Qualifying offences

- (1) An offence is a qualifying offence for the purposes of this Chapter if—
  - (a) it is listed in subsection (2), and
  - (b) the condition in subsection (3) is satisfied in relation to it.
- (2) The offences are—
  - (a) murder;
  - (b) manslaughter.
- (3) The condition in this subsection is that the death was caused by one or both of the following—
  - (a) being shot with a firearm;
  - (b) being injured with a knife.
- (4) The [<sup>F1</sup>appropriate authority] may by order amend this section—
  - (a) so as to add an offence to or omit an offence from the list in subsection (2), or
  - (b) so as to add, omit or modify a condition to be satisfied in relation to an offence.
- (5) In this section—

[<sup>F2</sup>“the appropriate authority” means, in relation to England and Wales, the Secretary of State and, in relation to Northern Ireland, the Department of Justice in Northern Ireland;]

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*Status: Point in time view as at 08/10/2012. This version of this part contains provisions that are prospective.  
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“firearm”, in relation to England and Wales, has the meaning given by section 57 of the Firearms Act 1968 (c. 27) and, in relation to Northern Ireland, has the meaning given by Article 2 of the Firearms (Northern Ireland) Order 2004 (S.I. 2004/702 (N.I. 3));

“knife” has the meaning given by section 10 of the Knives Act 1997 (c. 21).

#### Textual Amendments

- F1** Words in s. 74(4) substituted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), **Sch. 14 para. 94(2)** (with arts. 28-31)
- F2** Words in s. 74(5) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), **Sch. 14 para. 94(3)** (with arts. 28-31)

#### Commencement Information

- I1** S. 74 in force at 6.4.2010 for E.W. by [S.I. 2010/816](#), **art. 3**
- I2** S. 74 in force at 18.4.2011 for N.I. by [S.R. 2011/182](#), **art. 2(a)(i)**

## 75 Qualifying criminal investigations

- (1) For the purposes of this Chapter a criminal investigation is a qualifying criminal investigation if it is conducted by an investigating authority wholly or in part with a view to ascertaining—
- (a) whether a person should be charged with a qualifying offence, or
  - (b) whether a person charged with a qualifying offence is guilty of it.
- (2) The following are investigating authorities—
- (a) a police force in England and Wales;
  - (b) the British Transport Police Force;
  - (c) the Serious Organised Crime Agency;
  - (d) the Police Service of Northern Ireland.
- (3) The Secretary of State may by order amend subsection (2) so as to add or omit a body or other person.
- (4) The provision which may be included in an order under subsection (3) by virtue of section 176 (power to make consequential provision etc) includes provision modifying any provision of this Chapter.
- [<sup>F3</sup>(5) The power to make an order under subsection (3) is exercisable by the Department of Justice in Northern Ireland (and not by the Secretary of State) so far as it may be used to make provision which could be made by an Act of the Northern Ireland Assembly without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998).]

#### Textual Amendments

- F3** S. 75(5) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), **Sch. 14 para. 95(2)** (with arts. 28-31)

#### Commencement Information

- I3** S. 75 in force at 6.4.2010 for E.W. by [S.I. 2010/816](#), **art. 3**

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| <b>I4</b> | S. 75(1)(2)(d)(3)-(5) in force at 18.4.2011 for N.I. by <a href="#">S.R. 2011/182</a> , <a href="#">art. 2(a)(ii)</a> |
| <b>I5</b> | S. 75(2)(c) in force at 2.5.2011 for N.I. by <a href="#">S.I. 2011/1122</a> , <a href="#">art. 2</a>                  |

## 76 Investigation anonymity orders

- (1) In this Chapter an “investigation anonymity order” is an order made by a justice of the peace in relation to a specified person prohibiting the disclosure of information—
  - (a) that identifies the specified person as a person who is or was able or willing to assist a specified qualifying criminal investigation, or
  - (b) that might enable the specified person to be identified as such a person.
- (2) The prohibition in an investigation anonymity order is subject to subsections (3) to (9).
- (3) An investigation anonymity order is not contravened by disclosure of such information as regards the specified person as is described in subsection (1), if the person disclosing the information does not know and has no reason to suspect that such an order has been made in relation to the specified person in connection with the specified qualifying criminal investigation.
- (4) An investigation anonymity order is not contravened by disclosure of such information as regards the specified person as is described in subsection (1)(b), if the person disclosing the information does not know and has no reason to suspect that the information disclosed is information that might enable the specified person to be identified as a person of the sort described in subsection (1)(a) in relation to the specified qualifying criminal investigation.
- (5) A person (“A”) who discloses to another person (“B”) that an investigation anonymity order has been made in relation to a person in connection with the criminal investigation of a qualifying offence does not contravene the order if the condition in subsection (6) is satisfied.
- (6) The condition is that A knows that B is aware that the person specified in the order is a person who is or was able or willing to assist a criminal investigation relating to the qualifying offence.
- (7) A person who discloses information to which an investigation anonymity order relates does not contravene the order if—
  - (a) the disclosure is made to a person who is involved in the specified qualifying criminal investigation or in the prosecution of an offence to which the investigation relates, and
  - (b) the disclosure is made for the purposes of the investigation or the prosecution of an offence to which the investigation relates.
- (8) An investigation anonymity order is not contravened by—
  - (a) disclosure in pursuance of a requirement imposed by any enactment or rule of law, or
  - (b) disclosure made in pursuance of an order of a court.
- (9) A person who discloses such information as regards another person as is described in subsection (1) may not rely on subsection (8) in a case where—
  - (a) it might have been determined that the person was required or permitted to withhold the information (whether on grounds of public interest immunity or on other grounds), but

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- (b) the person disclosed the information without there having been a determination as to whether the person was required or permitted to withhold the information.

Disclosure for the purposes of seeking such a determination is not a contravention of an investigation anonymity order.

- (10) It is an offence for a person to disclose information in contravention of an investigation anonymity order.
- (11) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding the relevant period or a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine, or both.
- (12) “The relevant period” means—
  - (a) in relation to England and Wales, 12 months;
  - (b) in relation to Northern Ireland, 6 months.
- (13) In this section “specified” means specified in the investigation anonymity order concerned.

#### **Commencement Information**

- I6** S. 76 in force at 6.4.2010 for E.W. by [S.I. 2010/816](#), [art. 3](#)
- I7** S. 76(1)-(11)(12)(b)(13) in force at 18.4.2011 for N.I. by [S.R. 2011/182](#), [art. 2\(a\)\(iii\)](#)

## **77 Applications**

- (1) An application for an investigation anonymity order may be made to a justice of the peace by—
  - (a) in a case where a police force in England and Wales is conducting the qualifying criminal investigation, the chief officer of police of the police force;
  - (b) in a case where the British Transport Police Force is conducting the qualifying criminal investigation, the Chief Constable of the British Transport Police Force;
  - (c) in a case where the Serious Organised Crime Agency is conducting the qualifying criminal investigation, the Director General of the Serious Organised Crime Agency;
  - (d) in a case where the Police Service of Northern Ireland is conducting the qualifying criminal investigation, the Chief Constable of the Police Service of Northern Ireland;
  - (e) the Director of Public Prosecutions;
  - (f) the Director of Revenue and Customs Prosecutions;
  - (g) the Director of Public Prosecutions for Northern Ireland.
- (2) An applicant for an investigation anonymity order is not required to give notice of the application to—
  - (a) a person who is suspected of having committed or who has been charged with an offence to which the qualifying criminal investigation relates, or
  - (b) such a person's legal representatives.

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- (3) An applicant for an investigation anonymity order must (unless the justice of the peace directs otherwise) inform the justice of the identity of the person who would be specified in the order.
- (4) A justice of the peace may determine the application without a hearing.
- (5) If a justice of the peace determines an application for an investigation anonymity order without a hearing, the designated officer in relation to that justice must notify the applicant of the determination.
- (6) In the application of this section to Northern Ireland, the reference to the designated officer in relation to a justice of the peace is to be read as a reference to the clerk of petty sessions for the petty sessions district in which the application for an investigation anonymity order is made.
- (7) The Secretary of State may by order amend subsection (1).
- (8) The provision which may be included in an order under subsection (7) by virtue of section 176 (power to make consequential provision etc) includes provision modifying any provision of this Chapter.
- [<sup>F4</sup>(9) The power to make an order under subsection (7) is exercisable by the Department of Justice in Northern Ireland (and not by the Secretary of State) so far as it may be used to make provision which could be made by an Act of the Northern Ireland Assembly without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998).]

#### Textual Amendments

- F4** S. 77(9) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), **Sch. 14 para. 96(2)** (with arts. 28-31)

#### Commencement Information

- I8** S. 77 in force at 6.4.2010 for E.W. by [S.I. 2010/816](#), **art. 3**  
**I9** [S. 77\(1\)\(c\)](#) in force at 2.5.2011 for N.I. by [S.I. 2011/1122](#), **art. 2**  
**I10** [S. 77\(1\)\(d\)\(g\)\(2\)-\(8\)](#) in force at 18.4.2011 for N.I. by [S.R. 2011/182](#), **art. 2(a)(iv)**

## 78 Conditions for making order

- (1) This section applies where an application is made for an investigation anonymity order to be made in relation to a person.
- (2) The justice of the peace may make such an order if satisfied that there are reasonable grounds for believing that the conditions in subsections (3) to (8) are satisfied.
- (3) The condition in this subsection is that a qualifying offence has been committed.
- (4) The condition in this subsection is that the person likely to have committed the qualifying offence (“the relevant person”) is a person who was aged at least 11 but under 30 at the time the offence was committed.
- (5) The condition in this subsection is that the relevant person is likely to have been a member of a group falling within subsection (6) at the time the offence was committed.
- (6) A group falls within this subsection if—

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- (a) it is possible to identify the group from the criminal activities that its members appear to engage in, and
  - (b) it appears that the majority of the persons in the group are aged at least 11 but under 30.
- (7) The condition in this subsection is that the person who would be specified in the order has reasonable grounds for fearing intimidation or harm if identified as a person who is or was able or willing to assist the criminal investigation as it relates to the qualifying offence.
- (8) The condition in this subsection is that the person who would be specified in the order—
- (a) is able to provide information that would assist the criminal investigation as it relates to the qualifying offence, and
  - (b) is more likely than not, as a consequence of the making of the order, to provide such information.
- (9) If it is suspected that the qualifying offence was committed by 2 or more persons, it is sufficient for the purposes of subsection (2) that the justice is satisfied that there are reasonable grounds for believing that the conditions in subsections (3) to (8) are satisfied in relation to one person.
- (10) The [<sup>F5</sup>appropriate authority] may by order modify or repeal any of subsections (4) to (6) and (9).
- (11) The provision which may be included in an order under subsection (10) by virtue of section 176 (power to make consequential provision etc) includes provision modifying any provision of this Chapter.
- [<sup>F6</sup>(12) In subsection (10) “the appropriate authority” means, in relation to England and Wales, the Secretary of State and, in relation to Northern Ireland, the Department of Justice in Northern Ireland.]

#### Textual Amendments

- F5** Words in s. 78(10) substituted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), **Sch. 14 para. 97(2)** (with arts. 28-31)
- F6** S. 78(12) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), **Sch. 14 para. 97(3)** (with arts. 28-31)

#### Commencement Information

- I11** S. 78 in force at 6.4.2010 for E.W. by [S.I. 2010/816](#), **art. 3**
- I12** S. 78 in force at 18.4.2011 for N.I. by [S.R. 2011/182](#), **art. 2(a)(v)**

## 79 Appeal against refusal of order

- (1) Where a justice of the peace refuses an application for an investigation anonymity order, the applicant may appeal to a judge of the Crown Court against that refusal.
- (2) An applicant may not appeal under subsection (1) unless the applicant indicates—
- (a) in the application for the order, or
  - (b) if there is a hearing of the application before the justice, at the hearing, that the applicant intends to appeal a refusal.

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- (3) If an applicant has indicated an intention to appeal a refusal, a justice of the peace who refuses an application for an investigation anonymity order must make the order as requested by the applicant.
- (4) An order made under subsection (3) has effect until the appeal is determined or otherwise disposed of.
- (5) The judge to whom an appeal is made must consider afresh the application for an investigation anonymity order and section 77(3) to (5) applies accordingly to the determination of the application by the judge.
- (6) In the application of section 77(5) by virtue of subsection (5), the reference in section 77(5) to the designated officer in relation to a justice of the peace is to be read—
  - (a) in the case of an appeal made in England and Wales, as a reference to the appropriate officer of the Crown Court;
  - (b) in the case of an appeal made in Northern Ireland, as a reference to the chief clerk of the county court division in which the appeal is made.

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**Commencement Information**

**113** S. 79 in force at 6.4.2010 for E.W. by [S.I. 2010/816](#), [art. 3](#)

**114** S. 79(1)-(5)(6)(b) in force at 18.4.2011 for N.I. by [S.R. 2011/182](#), [art. 2\(a\)\(vi\)](#)

## **80 Discharge of order**

- (1) A justice of the peace may discharge an investigation anonymity order if it appears to the justice to be appropriate to do so.
- (2) The justice may so discharge an investigation anonymity order on an application by—
  - (a) the person on whose application the order was made;
  - (b) the Director of Public Prosecutions;
  - (c) the Director of Revenue and Customs Prosecutions;
  - (d) the Director of Public Prosecutions for Northern Ireland;
  - (e) the person specified in the order.
- (3) An application may not be made under subsection (2) unless there has been a material change of circumstances since the relevant time.
- (4) Any person eligible to apply for the discharge of the order is entitled to be party to the proceedings on the application in addition to the applicant.
- (5) If an application to discharge an investigation anonymity order is made by a person other than the person specified in the order, the justice may not determine the application unless—
  - (a) the person specified in the order has had an opportunity to oppose the application, or
  - (b) the justice is satisfied that it is not reasonably practicable to communicate with the person.
- (6) A party to the proceedings may appeal to a judge of the Crown Court against the justice's decision.

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- (7) If during the proceedings a party indicates an intention to appeal against a determination to discharge the investigation anonymity order, a justice of the peace who makes such a determination must provide for the discharge of the order not to have effect until the appeal is determined or otherwise disposed of.
- (8) “The relevant time” means—
- (a) the time when the order was made, or
  - (b) if a previous application has been made under subsection (2), the time when the application (or the last application) was made.

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**Commencement Information**

- I15** S. 80 in force at 6.4.2010 for E.W. by [S.I. 2010/816](#), [art. 3](#)  
**I16** S. 80(1)(2)(a)(d)(e)(3)-(8) in force at 18.4.2011 for N.I. by [S.R. 2011/182](#), [art. 2\(a\)\(vii\)](#)

**81 Delegation of functions**

- (1) A chief officer of police of a police force in England and Wales may authorise a person to exercise the chief officer's functions under this Chapter.
- (2) The Chief Constable of the British Transport Police Force may authorise a person to exercise the Chief Constable's functions under this Chapter.
- (3) The Director General of the Serious Organised Crime Agency may authorise a person to exercise the Director General's functions under this Chapter.
- (4) The Chief Constable of the Police Service of Northern Ireland may authorise a person to exercise the Chief Constable's functions under this Chapter.
- (5) The Director of Public Prosecutions may authorise a person to exercise the Director's functions under this Chapter.
- (6) The Director of Revenue and Customs Prosecutions may authorise a person to exercise the Director's functions under this Chapter.
- (7) The Director of Public Prosecutions for Northern Ireland may authorise a person to exercise the Director's functions under this Chapter.

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**Commencement Information**

- I17** S. 81 in force at 6.4.2010 for E.W. by [S.I. 2010/816](#), [art. 3](#)  
**I18** S. 81(3) in force at 2.5.2011 for N.I. by [S.I. 2011/1122](#), [art. 2](#)  
**I19** S. 81(4)(7) in force at 18.4.2011 for N.I. by [S.R. 2011/182](#), [art. 2\(a\)\(viii\)](#)

**82 Public interest immunity**

Nothing in this Chapter affects the common law rules as to the withholding of information on the grounds of public interest immunity.

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**Commencement Information**

- I20** S. 82 in force at 6.4.2010 for E.W. by [S.I. 2010/816](#), [art. 3](#)



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**I21** S. 82 in force at 18.4.2011 for N.I. by S.R. 2011/182, **art. 2(a)(ix)**

## 83 Review

- (1) The Secretary of State must review the operation of this Chapter<sup>[F7]</sup> in England and Wales] and prepare a report of that review.
- (2) The Secretary of State must lay a copy of the report before Parliament before the end of the period of 2 years beginning with the day on which section 77 comes into force.
- <sup>[F8]</sup>(3) The Department of Justice in Northern Ireland must review the operation of this Chapter in Northern Ireland and prepare a report of that review.
- (4) The Department of Justice must lay a copy of the report before the Northern Ireland Assembly before the end of the period of 2 years beginning with the day on which section 77 comes into force.
- (5) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of subsection (4) in relation to the laying of a copy of a report as it applies in relation to the laying of a statutory document under an enactment.]

### Textual Amendments

- F7** Words in s. 83(1) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), **Sch. 14 para. 98(2)** (with arts. 28-31)
- F8** S. 83(3)-(5) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), **Sch. 14 para. 98(3)** (with arts. 28-31)

### Commencement Information

- I22** S. 83 in force at 6.4.2010 for E.W. by [S.I. 2010/816](#), **art. 3**
- I23** S. 83(3)-(5) in force at 18.4.2011 for N.I. by [S.R. 2011/182](#), **art. 2(a)(x)**

## 84 Application to armed forces

- (1) Subject to subsection (2), nothing in this Chapter applies in relation to any investigation conducted with a view to its being ascertained whether a person should be charged with a service offence or whether a person charged with such an offence is guilty of it.
- (2) The Secretary of State may by order make as regards any investigation mentioned in subsection (1) provision equivalent to the provisions contained in this Chapter, subject to such modifications as the Secretary of State considers appropriate.
- (3) An order under this section may make provision in such way as the Secretary of State considers appropriate, and may in particular apply any of the provisions concerned, with or without modifications.
- (4) In this section—
  - (a) “service offence” has the meaning given by section 50(2) of the Armed Forces Act 2006 (c. 52);
  - (b) references to charges are to charges brought under Part 5 of that Act.

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**Commencement Information**

**I24** S. 84 in force at 6.4.2010 by S.I. 2010/816, art. 2, Sch. para. 5

**85 Interpretation of this Chapter**

(1) In this Chapter—

“enactment” means an enactment contained in or in an instrument made by virtue of—

- (a) an Act of Parliament,
- (b) a Measure or Act of the National Assembly for Wales, or
- (c) Northern Ireland legislation;

“investigation anonymity order” has the meaning given by section 76;

“qualifying criminal investigation” has the meaning given by section 75;

“qualifying offence” has the meaning given by section 74.

(2) In the application of this Chapter to Northern Ireland—

- (a) references to a justice of the peace are to be read as references to a district judge (magistrates' courts);
- (b) references to a judge of the Crown Court are to be read as references to a county court judge.

**Commencement Information**

**I25** S. 85 in force at 6.4.2010 for E.W. by S.I. 2010/816, art. 3

**I26** S. 85 in force at 18.4.2011 for N.I. by S.R. 2011/182, art. 2(a)(ix)

**CHAPTER 2**

ANONYMITY OF WITNESSES

*Witness anonymity orders*

**86 Witness anonymity orders**

(1) In this Chapter a “witness anonymity order” is an order made by a court that requires such specified measures to be taken in relation to a witness in criminal proceedings as the court considers appropriate to ensure that the identity of the witness is not disclosed in or in connection with the proceedings.

(2) The kinds of measures that may be required to be taken in relation to a witness include measures for securing one or more of the following—

- (a) that the witness's name and other identifying details may be—
  - (i) withheld;
  - (ii) removed from materials disclosed to any party to the proceedings;
- (b) that the witness may use a pseudonym;

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- (c) that the witness is not asked questions of any specified description that might lead to the identification of the witness;
  - (d) that the witness is screened to any specified extent;
  - (e) that the witness's voice is subjected to modulation to any specified extent.
- (3) Subsection (2) does not affect the generality of subsection (1).
- (4) Nothing in this section authorises the court to require—
- (a) the witness to be screened to such an extent that the witness cannot be seen by—
    - (i) the judge or other members of the court (if any), or
    - (ii) the jury (if there is one);
  - (b) the witness's voice to be modulated to such an extent that the witness's natural voice cannot be heard by any persons within paragraph (a)(i) or (ii).
- (5) In this section “specified” means specified in the witness anonymity order concerned.

## 87 Applications

- (1) An application for a witness anonymity order to be made in relation to a witness in criminal proceedings may be made to the court by the prosecutor or the defendant.
- (2) Where an application is made by the prosecutor, the prosecutor—
- (a) must (unless the court directs otherwise) inform the court of the identity of the witness, but
  - (b) is not required to disclose in connection with the application—
    - (i) the identity of the witness, or
    - (ii) any information that might enable the witness to be identified, to any other party to the proceedings or his or her legal representatives.
- (3) Where an application is made by the defendant, the defendant—
- (a) must inform the court and the prosecutor of the identity of the witness, but
  - (b) (if there is more than one defendant) is not required to disclose in connection with the application—
    - (i) the identity of the witness, or
    - (ii) any information that might enable the witness to be identified, to any other defendant or his or her legal representatives.
- (4) Accordingly, where the prosecutor or the defendant proposes to make an application under this section in respect of a witness, any relevant material which is disclosed by or on behalf of that party before the determination of the application may be disclosed in such a way as to prevent—
- (a) the identity of the witness, or
  - (b) any information that might enable the witness to be identified, from being disclosed except as required by subsection (2)(a) or (3)(a).
- (5) “Relevant material” means any document or other material which falls to be disclosed, or is sought to be relied on, by or on behalf of the party concerned in connection with the proceedings or proceedings preliminary to them.
- (6) The court must give every party to the proceedings the opportunity to be heard on an application under this section.

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- (7) But subsection (6) does not prevent the court from hearing one or more parties in the absence of a defendant and his or her legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.
- (8) Nothing in this section is to be taken as restricting any power to make rules of court.

## **88 Conditions for making order**

- (1) This section applies where an application is made for a witness anonymity order to be made in relation to a witness in criminal proceedings.
- (2) The court may make such an order only if it is satisfied that Conditions A to C below are met.
- (3) Condition A is that the proposed order is necessary—
  - (a) in order to protect the safety of the witness or another person or to prevent any serious damage to property, or
  - (b) in order to prevent real harm to the public interest (whether affecting the carrying on of any activities in the public interest or the safety of a person involved in carrying on such activities, or otherwise).
- (4) Condition B is that, having regard to all the circumstances, the effect of the proposed order would be consistent with the defendant receiving a fair trial.
- (5) Condition C is that the importance of the witness's testimony is such that in the interests of justice the witness ought to testify and—
  - (a) the witness would not testify if the proposed order were not made, or
  - (b) there would be real harm to the public interest if the witness were to testify without the proposed order being made.
- (6) In determining whether the proposed order is necessary for the purpose mentioned in subsection (3)(a), the court must have regard (in particular) to any reasonable fear on the part of the witness—
  - (a) that the witness or another person would suffer death or injury, or
  - (b) that there would be serious damage to property,
 if the witness were to be identified.

## **89 Relevant considerations**

- (1) When deciding whether Conditions A to C in section 88 are met in the case of an application for a witness anonymity order, the court must have regard to—
  - (a) the considerations mentioned in subsection (2) below, and
  - (b) such other matters as the court considers relevant.
- (2) The considerations are—
  - (a) the general right of a defendant in criminal proceedings to know the identity of a witness in the proceedings;
  - (b) the extent to which the credibility of the witness concerned would be a relevant factor when the weight of his or her evidence comes to be assessed;
  - (c) whether evidence given by the witness might be the sole or decisive evidence implicating the defendant;

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- (d) whether the witness's evidence could be properly tested (whether on grounds of credibility or otherwise) without his or her identity being disclosed;
- (e) whether there is any reason to believe that the witness—
  - (i) has a tendency to be dishonest, or
  - (ii) has any motive to be dishonest in the circumstances of the case, having regard (in particular) to any previous convictions of the witness and to any relationship between the witness and the defendant or any associates of the defendant;
- (f) whether it would be reasonably practicable to protect the witness by any means other than by making a witness anonymity order specifying the measures that are under consideration by the court.

## **90 Warning to jury**

- (1) Subsection (2) applies where, on a trial on indictment with a jury, any evidence has been given by a witness at a time when a witness anonymity order applied to the witness.
- (2) The judge must give the jury such warning as the judge considers appropriate to ensure that the fact that the order was made in relation to the witness does not prejudice the defendant.

### *Discharge and variation*

## **91 Discharge or variation of order**

- (1) A court that has made a witness anonymity order in relation to any criminal proceedings may in those proceedings subsequently discharge or vary (or further vary) the order if it appears to the court to be appropriate to do so in view of the provisions of sections 88 and 89 that apply to the making of an order.
- (2) The court may do so—
  - (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) on its own initiative.
- (3) The court must give every party to the proceedings the opportunity to be heard—
  - (a) before determining an application made to it under subsection (2);
  - (b) before discharging or varying the order on its own initiative.
- (4) But subsection (3) does not prevent the court hearing one or more of the parties to the proceedings in the absence of a defendant in the proceedings and his or her legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.
- (5) “The relevant time” means—
  - (a) the time when the order was made, or
  - (b) if a previous application has been made under subsection (2), the time when the application (or the last application) was made.

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## **92 Discharge or variation after proceedings**

- (1) This section applies if—
  - (a) a court has made a witness anonymity order in relation to a witness in criminal proceedings (“the old proceedings”), and
  - (b) the old proceedings have come to an end.
- (2) The court that made the order may discharge or vary (or further vary) the order if it appears to the court to be appropriate to do so in view of—
  - (a) the provisions of sections 88 and 89 that apply to the making of a witness anonymity order, and
  - (b) such other matters as the court considers relevant.
- (3) The court may do so—
  - (a) on an application made by a party to the old proceedings if there has been a material change of circumstances since the relevant time, or
  - (b) on an application made by the witness if there has been a material change of circumstances since the relevant time.
- (4) The court may not determine an application made to it under subsection (3) unless in the case of each of the parties to the old proceedings and the witness—
  - (a) it has given the person the opportunity to be heard, or
  - (b) it is satisfied that it is not reasonably practicable to communicate with the person.
- (5) Subsection (4) does not prevent the court hearing one or more of the persons mentioned in that subsection in the absence of a person who was a defendant in the old proceedings and that person's legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.
- (6) “The relevant time” means—
  - (a) the time when the old proceedings came to an end, or
  - (b) if a previous application has been made under subsection (3), the time when the application (or the last application) was made.

## **93 Discharge or variation by appeal court**

- (1) This section applies if—
  - (a) a court has made a witness anonymity order in relation to a witness in criminal proceedings (“the trial proceedings”), and
  - (b) a defendant in the trial proceedings has in those proceedings—
    - (i) been convicted,
    - (ii) been found not guilty by reason of insanity, or
    - (iii) been found to be under a disability and to have done the act charged in respect of an offence.
- (2) The appeal court may in proceedings on or in connection with an appeal by the defendant from the trial proceedings discharge or vary (or further vary) the order if it appears to the court to be appropriate to do so in view of—
  - (a) the provisions of sections 88 and 89 that apply to the making of a witness anonymity order, and
  - (b) such other matters as the court considers relevant.

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- (3) The appeal court may not discharge or vary the order unless in the case of each party to the trial proceedings—
  - (a) it has given the person the opportunity to be heard, or
  - (b) it is satisfied that it is not reasonably practicable to communicate with the person.
- (4) But subsection (3) does not prevent the appeal court hearing one or more of the parties to the trial proceedings in the absence of a person who was a defendant in the trial proceedings and that person's legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.
- (5) In this section a reference to the doing of an act includes a reference to a failure to act.
- (6) “Appeal court” means—
  - (a) the Court of Appeal,
  - (b) the Court of Appeal in Northern Ireland, or
  - (c) the Court Martial Appeal Court.

#### *Service courts*

### **94 Special provisions for service courts**

- (1) Subsections (2) and (3) apply in relation to a service court consisting of a judge advocate and other members.
- (2) Any decision falling to be made by the court under sections 86 to 92 is to be made by the judge advocate alone.
- (3) If any evidence is given by a witness in criminal proceedings before the court at a time when a witness anonymity order applies to the witness, the judge advocate must give the other members such warning as the judge advocate considers appropriate to ensure that the fact that the order was made in relation to the witness does not prejudice the defendant.

#### *Public interest immunity*

### **95 Public interest immunity**

Nothing in this Chapter affects the common law rules as to the withholding of information on the grounds of public interest immunity.

#### *The Criminal Evidence (Witness Anonymity) Act 2008*

### **96 Power to make orders under the 2008 Act**

Sections 1 to 9 and 14 of the Criminal Evidence (Witness Anonymity) Act 2008 (c. 15) cease to have effect.

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## *Interpretation*

### **97 Interpretation of this Chapter**

(1) In this Chapter—

“court” means—

- (a) in relation to England and Wales, a magistrates' court, the Crown Court or the criminal division of the Court of Appeal,
- (b) in relation to Northern Ireland, a magistrates' court, the Crown Court, a county court exercising its criminal jurisdiction, the High Court or the Court of Appeal in Northern Ireland, or
- (c) a service court;

“criminal proceedings” means—

- (a) in relation to a court within paragraph (a) or (b) above (other than the High Court in Northern Ireland), criminal proceedings consisting of a trial or other hearing at which evidence falls to be given;
- (b) in relation to the High Court in Northern Ireland, proceedings relating to bail in respect of a person charged with or convicted of an offence where the proceedings consist of a hearing at which evidence falls to be given;
- (c) in relation to a service court, proceedings in respect of a service offence consisting of a trial or other hearing at which evidence falls to be given;

“the defendant”, in relation to any criminal proceedings, means any person charged with an offence to which the proceedings relate (whether or not convicted);

“prosecutor” means any person acting as prosecutor, whether an individual or body;

“service court” means—

- (a) the Court Martial established by the Armed Forces Act 2006 (c. 52),
- (b) the Summary Appeal Court established by that Act,
- (c) the Service Civilian Court established by that Act, or
- (d) the Court Martial Appeal Court;

“service offence” has the meaning given by section 50(2) of the Armed Forces Act 2006 (c. 52);

“witness”, in relation to any criminal proceedings, means any person called, or proposed to be called, to give evidence at the trial or hearing in question;

“witness anonymity order” has the meaning given by section 86.

(2) In the case of a witness anonymity order made by a magistrates' court in England and Wales or Northern Ireland, a thing authorised or required by section 91 or 92 to be done by the court by which the order was made may be done by any magistrates' court acting in the same local justice area, or for the same petty sessions district, as that court.



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## CHAPTER 3

### VULNERABLE AND INTIMIDATED WITNESSES

#### *Special measures for vulnerable and intimidated witnesses*

#### **98 Eligibility for special measures: age of child witnesses**

- (1) The Youth Justice and Criminal Evidence Act 1999 (c. 23) is amended as follows.
- (2) In section 16(1)(a) (witnesses eligible because under 17), for “17” substitute “ 18 ”.
- (3) In section 21 (special provisions relating to child witnesses)—
  - (a) in subsection (8), for “17” substitute “ 18 ”, and
  - (b) in subsection (9)(b), for “17” substitute “ 18 ”.
- (4) In section 22 (extension of section 21 to certain witnesses)—
  - (a) in the title, for “17” substitute “ 18 ”, and
  - (b) in subsection (1)(a)(ii), for “17” substitute “ 18 ”.

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#### **Commencement Information**

**I27** S. 98 in force at 27.6.2011 by S.I. 2011/1452, art. 2(a)

#### **99 Eligibility for special measures: offences involving weapons**

- (1) The Youth Justice and Criminal Evidence Act 1999 is amended as follows.
- (2) In section 17 (witnesses eligible for assistance on grounds of fear or distress about testifying), after subsection (4) add—
  - “(5) A witness in proceedings relating to a relevant offence (or to a relevant offence and any other offences) is eligible for assistance in relation to those proceedings by virtue of this subsection unless the witness has informed the court of the witness's wish not to be so eligible by virtue of this subsection.
  - (6) For the purposes of subsection (5) an offence is a relevant offence if it is an offence described in Schedule 1A.
  - (7) The Secretary of State may by order amend Schedule 1A.”
- (3) In section 64(3) (orders subject to affirmative resolution procedure), in paragraph (a) after “section” insert “ 17(7),”.
- (4) Before Schedule 2 insert the Schedule 1A set out in Schedule 14 to this Act.

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#### **Commencement Information**

**I28** S. 99 in force at 27.6.2011 by S.I. 2011/1452, art. 2(a)

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## **100 Special measures directions for child witnesses**

- (1) Section 21 of the Youth Justice and Criminal Evidence Act 1999 (c. 23) (special provisions relating to child witnesses) is amended in accordance with subsections (2) to (7).
- (2) In subsection (1) (definitions), omit paragraph (b) (child witnesses in need of special protection) (but not the “and” following it).
- (3) In subsection (2) (determining contents of direction), for “(7)” substitute “(4C)”.
- (4) In subsection (4) (limitations on primary rule)—
  - (a) omit the “and” at the end of paragraph (b), and
  - (b) after paragraph (b) insert—
    - “(ba) if the witness informs the court of the witness's wish that the rule should not apply or should apply only in part, the rule does not apply to the extent that the court is satisfied that not complying with the rule would not diminish the quality of the witness's evidence; and”.
- (5) After subsection (4) insert—
  - “(4A) Where as a consequence of all or part of the primary rule being disapplied under subsection (4)(ba) a witness's evidence or any part of it would fall to be given as testimony in court, the court must give a special measures direction making such provision as is described in section 23 for the evidence or that part of it.
  - (4B) The requirement in subsection (4A) is subject to the following limitations—
    - (a) if the witness informs the court of the witness's wish that the requirement in subsection (4A) should not apply, the requirement does not apply to the extent that the court is satisfied that not complying with it would not diminish the quality of the witness's evidence; and
    - (b) the requirement does not apply to the extent that the court is satisfied that making such a provision would not be likely to maximise the quality of the witness's evidence so far as practicable (whether because the application to that evidence of one or more other special measures available in relation to the witness would have that result or for any other reason).”
- (6) After subsection (4B) (inserted by subsection (5)) insert—
  - “(4C) In making a decision under subsection (4)(ba) or (4B)(a), the court must take into account the following factors (and any others it considers relevant)—
    - (a) the age and maturity of the witness;
    - (b) the ability of the witness to understand the consequences of giving evidence otherwise than in accordance with the requirements in subsection (3) or (as the case may be) in accordance with the requirement in subsection (4A);
    - (c) the relationship (if any) between the witness and the accused;
    - (d) the witness's social and cultural background and ethnic origins;
    - (e) the nature and alleged circumstances of the offence to which the proceedings relate.”

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- (7) Omit subsections (5) to (7).
- (8) In section 22 of that Act (extension of provisions of section 21)—
- (a) in subsection (1), omit paragraph (b) (but not the “and” following it), and
  - (b) for subsection (2) substitute—
    - “(2) Subsections (2) to (4) and (4C) of section 21, so far as relating to the giving of a direction complying with the requirement contained in section 21(3)(a), apply to a qualifying witness in respect of the relevant recording as they apply to a child witness (within the meaning of that section).”

**Commencement Information**

**I29** S. 100 in force at 27.6.2011 by S.I. 2011/1452, art. 2(a)

**101 Special provisions relating to sexual offences**

After section 22 of the Youth Justice and Criminal Evidence Act 1999 (c. 23) insert—

**“22A Special provisions relating to sexual offences**

- (1) This section applies where in criminal proceedings relating to a sexual offence (or to a sexual offence and other offences) the complainant in respect of that offence is a witness in the proceedings.
- (2) This section does not apply if the place of trial is a magistrates' court.
- (3) This section does not apply if the complainant is an eligible witness by reason of section 16(1)(a) (whether or not the complainant is an eligible witness by reason of any other provision of section 16 or 17).
- (4) If a party to the proceedings makes an application under section 19(1)(a) for a special measures direction in relation to the complainant, the party may request that the direction provide for any relevant recording to be admitted under section 27 (video recorded evidence in chief).
- (5) Subsection (6) applies if—
  - (a) a party to the proceedings makes a request under subsection (4) with respect to the complainant, and
  - (b) the court determines for the purposes of section 19(2) that the complainant is eligible for assistance by virtue of section 16(1)(b) or 17.
- (6) The court must—
  - (a) first have regard to subsections (7) to (9); and
  - (b) then have regard to section 19(2);and for the purposes of section 19(2), as it then applies to the complainant, any special measure required to be applied in relation to the complainant by virtue of this section is to be treated as if it were a measure determined by the court, pursuant to section 19(2)(a) and (b)(i), to be one that (whether on its own or with

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any other special measures) would be likely to maximise, so far as practicable, the quality of the complainant's evidence.

- (7) The court must give a special measures direction in relation to the complainant that provides for any relevant recording to be admitted under section 27.
- (8) The requirement in subsection (7) has effect subject to section 27(2).
- (9) The requirement in subsection (7) does not apply to the extent that the court is satisfied that compliance with it would not be likely to maximise the quality of the complainant's evidence so far as practicable (whether because the application to that evidence of one or more other special measures available in relation to the complainant would have that result or for any other reason).
- (10) In this section “relevant recording”, in relation to a complainant, is a video recording of an interview of the complainant made with a view to its admission as the evidence in chief of the complainant.”

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**Commencement Information**

**I30** S. 101 in force at 27.6.2011 by S.I. 2011/1452, art. 2(a)

**102 Evidence by live link: presence of supporter**

- (1) In section 24 of the Youth Justice and Criminal Evidence Act 1999 (c. 23) (evidence by live link), after subsection (1) insert—
  - “(1A) Such a direction may also provide for a specified person to accompany the witness while the witness is giving evidence by live link.
  - (1B) In determining who may accompany the witness, the court must have regard to the wishes of the witness.”
- (2) In section 27 of that Act (video recorded evidence in chief), after subsection (9) insert—
  - “(9A) If the court directs under subsection (9) that evidence is to be given by live link, it may also make such provision in that direction as it could make under section 24(1A) in a special measures direction.”

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**Commencement Information**

**I31** S. 102 in force at 27.6.2011 by S.I. 2011/1452, art. 2(a)

**103 Video recorded evidence in chief: supplementary testimony**

- (1) Section 27 of the Youth Justice and Criminal Evidence Act 1999 (video recorded evidence in chief) is amended as follows.
- (2) In subsection (5) (consequences of admitting video recording), for paragraph (b) substitute—
  - “(b) the witness may not without the permission of the court give evidence in chief otherwise than by means of the recording as to any matter

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which, in the opinion of the court, is dealt with in the witness's recorded testimony.”

- (3) In subsection (7) (giving permission for additional testimony)—
  - (a) for “subsection (5)(b)(ii)” substitute “ subsection (5)(b) ”, and
  - (b) in paragraph (a) (requirement of a material change of circumstances since the relevant time), omit from “if there” to “relevant time,”.
- (4) Omit subsection (8) (definition of “the relevant time”).
- (5) In subsection (9) (supplementary testimony by live link), for “subsection (5)(b)(ii)” substitute “ subsection (5)(b) ”.

**Commencement Information**

**I32** S. 103 in force at 27.6.2011 by S.I. 2011/1452, art. 2(a)

PROSPECTIVE

*Evidence of certain accused persons*

**104 Examination of accused through intermediary**

- (1) After section 33B of the Youth Justice and Criminal Evidence Act 1999 (c. 23) insert—

**“33BA Examination of accused through intermediary**

- (1) This section applies to any proceedings (whether in a magistrates' court or before the Crown Court) against a person for an offence.
- (2) The court may, on the application of the accused, give a direction under subsection (3) if it is satisfied—
  - (a) that the condition in subsection (5) is or, as the case may be, the conditions in subsection (6) are met in relation to the accused, and
  - (b) that making the direction is necessary in order to ensure that the accused receives a fair trial.
- (3) A direction under this subsection is a direction that provides for any examination of the accused to be conducted through an interpreter or other person approved by the court for the purposes of this section (“an intermediary”).
- (4) The function of an intermediary is to communicate—
  - (a) to the accused, questions put to the accused, and
  - (b) to any person asking such questions, the answers given by the accused in reply to them,and to explain such questions or answers so far as necessary to enable them to be understood by the accused or the person in question.
- (5) Where the accused is aged under 18 when the application is made the condition is that the accused's ability to participate effectively in the

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proceedings as a witness giving oral evidence in court is compromised by the accused's level of intellectual ability or social functioning.

- (6) Where the accused has attained the age of 18 when the application is made the conditions are that—
- (a) the accused suffers from a mental disorder (within the meaning of the Mental Health Act 1983) or otherwise has a significant impairment of intelligence and social function, and
  - (b) the accused is for that reason unable to participate effectively in the proceedings as a witness giving oral evidence in court.
- (7) Any examination of the accused in pursuance of a direction under subsection (3) must take place in the presence of such persons as Criminal Procedure Rules or the direction may provide and in circumstances in which—
- (a) the judge or justices (or both) and legal representatives acting in the proceedings are able to see and hear the examination of the accused and to communicate with the intermediary,
  - (b) the jury (if there is one) are able to see and hear the examination of the accused, and
  - (c) where there are two or more accused in the proceedings, each of the other accused is able to see and hear the examination of the accused.
- For the purposes of this subsection any impairment of eyesight or hearing is to be disregarded.
- (8) Where two or more legal representatives are acting for a party to the proceedings, subsection (7)(a) is to be regarded as satisfied in relation to those representatives if at all material times it is satisfied in relation to at least one of them.
- (9) A person may not act as an intermediary in a particular case except after making a declaration, in such form as may be prescribed by Criminal Procedure Rules, that the person will faithfully perform the function of an intermediary.
- (10) Section 1 of the Perjury Act 1911 (perjury) applies in relation to a person acting as an intermediary as it applies in relation to a person lawfully sworn as an interpreter in a judicial proceeding.

### **33BB Further provision as to directions under section 33BA(3)**

- (1) The court may discharge a direction given under section 33BA(3) at any time before or during the proceedings to which it applies if it appears to the court that the direction is no longer necessary in order to ensure that the accused receives a fair trial (but this does not affect the power to give a further direction under section 33BA(3) in relation to the accused).
- (2) The court may vary (or further vary) a direction given under section 33BA(3) at any time before or during the proceedings to which it applies if it appears to the court that it is necessary for the direction to be varied in order to ensure that the accused receives a fair trial.
- (3) The court may exercise the power in subsection (1) or (2) of its own motion or on an application by a party.

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- (4) The court must state in open court its reasons for—
- (a) giving, varying or discharging a direction under section 33BA(3), or
  - (b) refusing an application for, or for the variation or discharge of, a direction under section 33BA(3),
- and, if it is a magistrates' court, it must cause those reasons to be entered in the register of its proceedings.”
- (2) In the heading of Chapter 1A of Part 2 of that Act, after “LIVE LINK” insert “ AND INTERMEDIARY ”.

*Witnesses protected from cross-examination by accused in person*

**105 Age of child complainant**

In section 35 of the Youth Justice and Criminal Evidence Act 1999 (c. 23) (child complainants and other child witnesses), in subsection (4)(a) for “17” substitute “ 18 ”.

**Commencement Information**

**I33** S. 105 in force at 27.6.2011 by S.I. 2011/1452, art. 2(b)

**CHAPTER 4**

LIVE LINKS

**106 Directions to attend through live link**

- (1) The Crime and Disorder Act 1998 (c. 37) is amended as follows.
- (2) In section 57B (use of live link at preliminary hearings where accused is in custody), after subsection (6) add—
- “(7) The following functions of a magistrates' court under this section may be discharged by a single justice—
- (a) giving a live link direction under this section;
  - (b) rescinding a live link direction before a preliminary hearing begins; and
  - (c) requiring or permitting a person to attend by live link a hearing about a matter within paragraph (a) or (b).”
- (3) In section 57C (use of live link at preliminary hearings where accused is at police station)—
- (a) after subsection (6) insert—
- “(6A) A live link direction under this section may not be given unless the court is satisfied that it is not contrary to the interests of justice to give the direction.”,
- (b) omit subsection (7) (no live link direction unless accused consents),

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- (c) in subsection (8) (power to rescind live link direction before or during hearing), omit “before or”, and
  - (d) in subsection (9) (representations about use of live link), omit paragraph (a) (and the “and” following it).
- (4) In section 57D (continued use of live link for sentencing hearing following a preliminary hearing)—
- (a) in subsection (2) (conditions for use of live link)—
    - (i) omit paragraph (b) (but not the “and” following it), and
    - (ii) in paragraph (c), for “it” to the end substitute “ the accused continuing to attend through the live link is not contrary to the interests of justice. ”, and
  - (b) in subsection (3) (conditions for giving oral evidence by live link), omit paragraph (a) (and the “and” following it).
- (5) In section 57E (use of live link in sentencing hearings)—
- (a) in subsection (5) (conditions for giving live link direction), omit paragraph (a) (and the “and” following it), and
  - (b) in subsection (7) (conditions for giving oral evidence by live link), omit paragraph (a) (and the “and” following it).

#### **Commencement Information**

- I34** S. 106(1) in force at 14.12.2009 for specified purposes by [S.I. 2009/3253](#), [art. 2\(a\)\(iii\)](#), [3\(1\)\(a\)](#) (with [art. 4](#))
- I35** [S. 106\(1\)](#) in force at 3.10.2011 for specified purposes by [S.I. 2011/2148](#), [art. 2\(1\)\(a\)](#)
- I36** [S. 106\(1\)\(3\)](#) in force at 8.10.2012 in so far as not already in force by [S.I. 2012/2374](#), [art. 3\(a\)](#)
- I37** S. 106(2)(5) in force at 14.12.2009 by [S.I. 2009/3253](#), [art. 2\(a\)\(i\)](#) (with [art. 4](#))
- I38** S. 106(3) in force at 14.12.2009 for specified purposes by [S.I. 2009/3253](#), [art. 3\(1\)\(a\)](#) (with [art. 4](#))
- I39** [S. 106\(3\)](#) in force at 3.10.2011 for specified purposes by [S.I. 2011/2148](#), [art. 2\(1\)\(a\)](#)
- I40** S. 106(4) in force at 14.12.2009 by [S.I. 2009/3253](#), [art. 2\(a\)\(ii\)](#)

## **107 Answering to live link bail**

- (1) The Police and Criminal Evidence Act 1984 (c. 60) is amended as follows.
- (2) In section 46ZA (persons granted live link bail)—
- (a) in subsection (3) (accused persons who answer to live link bail and are treated as in police detention)—
    - (i) omit paragraph (a)(persons not intending to consent to live link direction),
    - (ii) in paragraph (b), for “at any such time,” substitute “ at any time before the beginning of proceedings in relation to a live link direction under section 57C of the Crime and Disorder Act 1998 in relation to the accused person, ”,
    - (iii) omit paragraph (c)(persons not giving consent during proceedings in relation to a live link direction) (but not the “or” following it), and
    - (iv) in paragraph (d), for “any other reason” substitute “ any reason ”, and



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- (b) in subsection (4) (effect of subsection (3) applying to a person), for “any of paragraphs (a) to (d) of subsection (3) apply” substitute “ paragraph (b) or (d) of subsection (3) applies ”.
- (3) In section 46A(power of arrest for failure to answer police bail), in subsection (1ZA) (such failure includes leaving police station without informing a constable that intend not to consent to live link direction), in paragraph (b) omit from “, without informing” to the end.

#### Commencement Information

- I41** S. 107 in force at 14.12.2009 for specified purposes by S.I. 2009/3253, art. 3(1)(b) (with art. 4)
- I42** S. 107 in force at 3.10.2011 for specified purposes by S.I. 2011/2148, art. 2(1)(b)
- I43** S. 107 in force at 8.10.2012 in so far as not already in force by S.I. 2012/2374, art. 3(b)

### 108 Searches of persons answering to live link bail

- (1) After section 54A of the Police and Criminal Evidence Act 1984 (c. 60) insert—

#### “54B Searches of persons answering to live link bail

- (1) A constable may search at any time—
  - (a) any person who is at a police station to answer to live link bail; and
  - (b) any article in the possession of such a person.
- (2) If the constable reasonably believes a thing in the possession of the person ought to be seized on any of the grounds mentioned in subsection (3), the constable may seize and retain it or cause it to be seized and retained.
- (3) The grounds are that the thing—
  - (a) may jeopardise the maintenance of order in the police station;
  - (b) may put the safety of any person in the police station at risk; or
  - (c) may be evidence of, or in relation to, an offence.
- (4) The constable may record or cause to be recorded all or any of the things seized and retained pursuant to subsection (2).
- (5) An intimate search may not be carried out under this section.
- (6) The constable carrying out a search under subsection (1) must be of the same sex as the person being searched.
- (7) In this section “live link bail” means bail granted under Part 4 of this Act subject to the duty mentioned in section 47(3)(b).

#### 54C Power to retain articles seized

- (1) Except as provided by subsections (2) and (3), a constable may retain a thing seized under section 54B until the time when the person from whom it was seized leaves the police station.

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- (2) A constable may retain a thing seized under section 54B in order to establish its lawful owner, where there are reasonable grounds for believing that it has been obtained in consequence of the commission of an offence.
  - (3) If a thing seized under section 54B may be evidence of, or in relation to, an offence, a constable may retain it—
    - (a) for use as evidence at a trial for an offence; or
    - (b) for forensic examination or for investigation in connection with an offence.
  - (4) Nothing may be retained for either of the purposes mentioned in subsection (3) if a photograph or copy would be sufficient for that purpose.
  - (5) Nothing in this section affects any power of a court to make an order under section 1 of the Police (Property) Act 1897.
  - (6) The references in this section to anything seized under section 54B include anything seized by a person to whom paragraph 27A of Schedule 4 to the Police Reform Act 2002 applies.”
- (2) In section 46A of that Act (power of arrest for failure to answer to police bail), after subsection (1ZA) insert—
- “(1ZB) The reference in subsection (1) to a person who fails to attend at a police station at the time appointed for the person to do so includes a reference to a person who—
- (a) attends at a police station to answer to bail granted subject to the duty mentioned in section 47(3)(b), but
  - (b) refuses to be searched under section 54B.”
- (3) In Part 3 of Schedule 4 to the Police Reform Act 2002 (c. 30) (powers exercisable by detention officers), after paragraph 27 insert—

**“Searches of persons answering to live link bail**

- 27A (1) Where a designation applies this paragraph to any person, that person has the powers of a constable under section 54B of the 1984 Act (searches of persons answering to live link bail)—
- (a) to carry out a search of any person attending a police station in the relevant police area; and
  - (b) to seize or retain articles found on such a search.
- (2) Anything seized by a person under the power conferred by subparagraph (1) must be delivered to a constable as soon as practicable and in any case before the person from whom the thing was seized leaves the police station.”

**Commencement Information**

- I44** S. 108 in force at 14.12.2009 for specified purposes by S.I. 2009/3253, **art. 3(1)(c)**  
**I45** S. 108 in force at 3.10.2011 for specified purposes by S.I. 2011/2148, **art. 2(1)(c)**  
**I46** S. 108 in force at 8.10.2012 in so far as not already in force by S.I. 2012/2374, **art. 3(c)**

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## **109 Use of live link in certain enforcement hearings**

(1) After section 57E of the Crime and Disorder Act 1998 (c. 37) insert—

### **“57F Use of live link in certain enforcement hearings**

- (1) This section applies where—
  - (a) a confiscation order is made against a person; and
  - (b) the amount required to be paid under the order is not paid when it is required to be paid.
- (2) If it appears to the court before which an enforcement hearing relating to the confiscation order is to take place that it is likely that the person will be held in custody at the time of the hearing, the court may give a live link direction under this section in relation to that hearing.
- (3) A live link direction under this section is a direction requiring the person, if the person is being held in custody at the time of the hearing, to attend it through a live link from the place at which the person is being held.
- (4) Such a direction—
  - (a) may be given by the court of its own motion or on an application by a party; and
  - (b) may be given in relation to all subsequent enforcement hearings before the court or to such hearing or hearings as may be specified or described in the direction.
- (5) The court may rescind a live link direction under this section at any time before or during a hearing to which it relates.
- (6) The court may not give or rescind a live link direction under this section (whether at a hearing or otherwise) unless the parties to the proceedings have been given the opportunity to make representations.
- (7) If a hearing takes place in relation to the giving or rescinding of such a direction, the court may require or permit any party to the proceedings who wishes to make representations in relation to the giving or rescission of a live link direction under this section to do so through a live link.
- (8) The person may not give oral evidence while attending a hearing through a live link by virtue of this section unless the court is satisfied that it is not contrary to the interests of justice for the person to give it that way.
- (9) If in a case where it has power to do so a court decides not to give a live link direction under this section, it must—
  - (a) state in open court its reasons for not doing so; and
  - (b) cause those reasons to be entered in the register of its proceedings.
- (10) The following functions of a magistrates' court under this section may be discharged by a single justice—
  - (a) giving a live link direction under this section;
  - (b) rescinding a live link direction before a preliminary hearing begins; and

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- (c) requiring or permitting a person to attend by live link a hearing about a matter within paragraph (a) or (b).”
- (2) In section 57A of that Act (introductory)—
- (a) in subsection (1)—
- (i) in paragraph (a), after “an offence” insert “ and enforcement hearings relating to confiscation orders ”, and
- (ii) in paragraph (b), for “and 57E” substitute “ , 57E and 57F ”, and
- (b) in subsection (3), at the appropriate place insert—
- ““confiscation order” means an order made under—
- (a) section 71 of the Criminal Justice Act 1988;
- (b) section 2 of the Drug Trafficking Act 1994; or
- (c) section 6 of the Proceeds of Crime Act 2002;”, and
- “ “enforcement hearing” means a hearing under section 82 of the Magistrates' Courts Act 1980 to consider the issuing of a warrant of committal or to inquire into a person's means;”.
- (3) In the title of Part 3A of that Act, for “AND SENTENCING” substitute “ , SENTENCING AND OTHER ”.

**Commencement Information**

**I47** [S. 109](#) in force at 14.12.2009 by [S.I. 2009/3253](#), [art. 2\(b\)](#)

**110 Direction of registrar for appeal hearing by live link**

In section 31A of the Criminal Appeal Act 1968 (c. 19) (powers of the Court of Appeal under Part 1 of that Act that are exercisable by the registrar), in subsection (2), after paragraph (a) insert—

“(aa) to give a live link direction under section 22(4);”.

**Commencement Information**

**I48** [S. 110](#) in force at 14.12.2009 by [S.I. 2009/3253](#), [art. 2\(c\)](#)

**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).

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**Commencement Information**

**I49** S. 111 in force at 27.6.2011 by S.I. 2011/1452, art. 2(c)

*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).

**Commencement Information**

**I50** S. 112 in force at 1.2.2010 by S.I. 2010/145, art. 2(2), Sch. para. 6

*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.

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- (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.”

**Commencement Information**

**I51** S. 113 in force at 6.4.2010 by S.I. 2010/816, art. 2, Sch. para. 6

*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—

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- “(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.”.

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**Commencement Information**

**I52** S. 114 in force at 1.2.2010 by S.I. 2010/145, art. 2(2), Sch. para. 7

### 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.
- (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.

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**Commencement Information**

**I53** S. 115 in force at 1.2.2010 by S.I. 2010/145, art. 2(2), Sch. para. 8

### *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,

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- (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—
    - (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).



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(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—

“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.”

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**Commencement Information**

**I54** S. 117(1)-(3) in force at 7.8.2012 by S.I. 2012/1810, art. 2

**Status:**

Point in time view as at 08/10/2012. This version of this part contains provisions that are prospective.

**Changes to legislation:**

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