



# Coroners and Justice Act 2009

## 2009 CHAPTER 25

### PART 3

#### CRIMINAL EVIDENCE, INVESTIGATIONS AND PROCEDURE

### 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;
  - (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—

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- (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.
- (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.

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## **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;
  - (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,

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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.

## 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.

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- (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.
- (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.

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- (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.

#### *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,

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- (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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