

CRIMES (VULNERABLE WITNESSES) ACT 2009

Repealed by Act. 2011-24 as from 23.11.2012

Principal Act

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enactments

Relevant current
provisions

Commencement
date

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AN ACT TO MAKE PROVISION FOR THE PROTECTION OF VULNERABLE AND INTIMIDATED WITNESSES IN COURT PROCEEDINGS, FOR RESTRICTING REPORTING ABOUT CERTAIN OFFENCES GENERALLY, FOR RESTRICTING THE REPORTING OF THE IDENTITY OF VICTIMS OF CERTAIN OFFENCES, FOR THE MAKING OF ORDERS TO SECURE THE ANONYMITY OF WITNESSES IN CRIMINAL PROCEEDINGS, AND FOR CONNECTED PURPOSES.

PART 1 - PRELIMINARY

Title and commencement.

1.(1) This Act may be cited as the Crimes (Vulnerable Witnesses) Act 2009.

(2) This Act comes into operation on the day or days appointed by the Government.

(3) Different days may be appointed under subsection (2) for different provisions and for different purposes of this Act.

Interpretation.

2.(1) In this Act, unless the context otherwise requires—

“appellate court”, in relation to criminal proceedings, means the Court of Appeal in its criminal jurisdiction or the Supreme Court hearing an appeal from the Magistrates’ Court;

“Care Agency” means the agency established by section 3 of the Care Agency Act 2009;

“child witness” has the meaning given to it by section 8(1);

“commencement”, in relation to a Part, means the day on which the Part comes into operation;

“complainant”, in relation to an offence or alleged offence, means a person against or in relation to whom the offence was, or is alleged to have been, committed;

“court” means a Magistrates’ Court, the Supreme Court or the criminal division of the Court of Appeal;

“criminal proceedings” means proceedings for an offence consisting of a trial or other hearing at which evidence falls to be given;

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

“eligible witness” means a witness eligible for assistance by virtue of section 3 or 4;

“judge” means a judge of the Supreme Court;

“legal representative” means a person enrolled as a barrister or solicitor of the Supreme Court under Part IV of the Supreme Court Act;

“mental disorder” has the meaning given by section 3(1) of the Mental Health Act;

“Minister” means the Minister with responsibility for justice;

“picture” includes a likeness however produced;

“prosecutor” means an individual or body charged with duties to conduct criminal prosecutions;

“publication”–

- (a) includes any speech, writing, radio or television broadcast or other communication, in whatever form, that is addressed to the public at large or any section of the public; but
- (b) does not include an indictment or other document prepared for use in particular legal proceedings;

“relevant time” in relation to a direction means–

- (a) the time when the direction was given; or
- (b) if a previous application has been made for a direction, the time when the application (or last application) was made;

“sexual offence” means–

- (a) an offence under Part XII of the Criminal Offences Act (Sexual Offences);
- (b) conspiracy to commit any offence mentioned in paragraph (a);
- (c) attempting to commit any of those offences;

- (d) encouraging or assisting or inciting another to commit any of those offences;

“special measures direction” means a direction given under section 6;

“video recording” means any recording, on any medium, from which a moving image may by any means be produced, and includes the accompanying sound-track;

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

“witness anonymity order” has the meaning given by section 43.

(2) In this Act—

- (a) references to the quality of a witness’s evidence are to its quality in terms of completeness, coherence and accuracy; and for this purpose “coherence” refers to a witness’s ability in giving evidence to give answers which address the questions put to the witness and can be understood both individually and collectively;
- (b) references to the special measures available in relation to a witness are to be construed in accordance with section 5;
- (c) references to a person being able to see or hear, or be seen or heard by, another person are to be read as not applying to the extent that either of them is unable to see or hear by reason of any impairment of eyesight or hearing;
- (d) a reference to cross-examination includes a reference to further cross-examination;
- (e) a reference to an offence includes a reference to attempting or conspiring to commit, or aiding, abetting, counselling, procuring or inciting the commission of, that offence;
- (f) in proceedings in which there is more than one defendant, a reference to the defendant includes a reference to all or any of the defendants, as the court determines.

(3) For the purposes of this Act—

- (a) the age of a person is to be taken to be that which it appears to the court to be after considering any available evidence;

- (b) if it is alleged that an offence to which this Act applies has been committed, the fact that any person has consented to an act which, on a prosecution for that offence, would fall to be proved by the prosecution, does not prevent that person from being regarded as a person against whom the alleged offence was committed;
- (c) if it is alleged that an offence of conspiracy or incitement of another to commit an offence has been committed, the person against whom the substantive offence is alleged to have been intended to be committed is to be regarded as the person against whom the conspiracy or incitement is alleged to have been committed;
- (d) if a person is accused of an offence of incest or buggery, the other party to the act in question is to be taken to be a person against whom the offence was committed even though he consented to that act;
- (e) a person is accused of an offence if—
 - (i) an information is laid alleging that he has committed the offence;
 - (ii) he appears before a court charged with the offence;
 - (iii) a court before which he is appearing sends him to the Supreme Court for trial on a new charge alleging the offence; or
 - (iv) a bill of indictment charging him with the offence is preferred before a court in which he may lawfully be indicted for the offence.

PART 2 - SPECIAL MEASURES

Eligible witnesses

Witnesses eligible for assistance on grounds of age or incapacity.

3.(1) A witness in criminal proceedings (other than the defendant) is eligible for assistance by virtue of this section if—

- (a) the witness is under the age of 17 at the time of the hearing; or

- (b) the court considers that the quality of evidence given by the witness is likely to be diminished by reason of any circumstances falling within subsection (2).

(2) The circumstances falling within this subsection are—

- (a) that the witness—
 - (i) suffers from mental disorder; or
 - (ii) otherwise has a significant impairment of intelligence and social functioning;
- (b) that the witness has a physical disability or is suffering from a physical disorder.

(3) In subsection (1)(a) “the time of the hearing”, in relation to a witness, means the time when it falls to the court to make a determination for the purposes of section 6 in relation to the witness.

(4) In determining whether a witness falls within subsection (1)(b) the court must consider any views expressed by the witness.

Witnesses eligible for assistance on grounds of fear or distress about testifying.

4.(1) For the purposes of this Act, a witness in criminal proceedings (other than the defendant) is eligible for assistance by virtue of this subsection if the court is satisfied that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings.

(2) In determining whether a witness falls within subsection (1) the court must take into account, in particular—

- (a) the nature and alleged circumstances of the offence to which the proceedings relate;
- (b) the age of the witness;
- (c) such of the following matters as appear to the court to be relevant, namely—
 - (i) the social and cultural background and ethnic origins of the witness;
 - (ii) the domestic and employment circumstances of the witness; and

- (iii) any religious beliefs or political opinions of the witness;
- (d) any behaviour towards the witness on the part of—
 - (i) the defendant;
 - (ii) members of the family or associates of the defendant; or
 - (iii) any other person who is likely to be a defendant or a witness in the proceedings.

(3) In determining that question the court must in addition consider any views expressed by the witness.

(4) If the complainant in respect of a sexual offence is a witness in proceedings relating to that offence (or to that offence and any other offences), the witness is eligible for assistance in relation to those proceedings by virtue of this subsection unless the witness has informed the court of the witness' wish not to be so eligible by virtue of this subsection.

Special measures available to eligible witnesses.

5.(1) For the purposes of this Part—

- (a) the provision which may be made by a special measures direction by virtue of each of sections 10 to 17 is a special measure available in relation to a witness eligible for assistance by virtue of section 3; and
- (b) (subject to subsection (3)) the provision which may be made by such a direction by virtue of each of sections 10 to 15 is a special measure available in relation to a witness eligible for assistance by virtue of section 4.

(2) The Minister, in consultation with the Chief Justice, may by notice in the Gazette specify the arrangements that can be made available in specified courts for the purposes of this Part.

(3) A court must not make a special measures direction pursuant to subsection (1)(a) or (b) in relation to a witness in any proceedings unless the Minister has by a notice published under subsection (2) indicated that relevant arrangements can be made available in the court where the proceedings will take place.

(4) In subsection (3) “relevant arrangements” means arrangements for implementing the measure in question which cover the witness and the proceedings in question.

(5) The Minister may by regulations add any new measure to the special measures which, in accordance with subsection (1)(a) or (b), are available in relation to a witness eligible for assistance by virtue of section 3 or (as the case may be) section 4.

Special measures directions

Special measures direction relating to eligible witness.

6.(1) This section applies when in any criminal proceedings—

- (a) a party to the proceedings makes an application for the court to give a direction under this section in relation to a witness in the proceedings other than the defendant; or
- (b) the court on its own initiative raises the issue whether such a direction should be given.

(2) If the court determines that the witness is eligible for assistance by virtue of section 3 or 4, the court must—

- (a) determine whether any of the special measures available in relation to the witness (or any combination of them) would, in its opinion, be likely to improve the quality of evidence given by the witness; and
- (b) if so—
 - (i) determine which of those measures (or combination of them) would, in its opinion, be likely to maximise so far as practicable the quality of such evidence; and
 - (ii) give a direction under this section providing for the measure or measures so determined to apply to evidence given by the witness.

(3) In determining for the purposes of this Act whether any special measure or measures would or would not be likely to improve, or to maximise so far as practicable, the quality of evidence given by the witness, the court must consider all the circumstances of the case, including in particular—

- (a) any views expressed by the witness; and

- (b) whether the measure or measures might tend to inhibit such evidence being effectively tested by a party to the proceedings.

(4) A special measures direction must specify particulars of the provision made by the direction in respect of each special measure which is to apply to the witness's evidence.

General provisions about directions.

7.(1) Subject to subsection (2) and section 8(8), a special measures direction has binding effect from the time it is made until the proceedings for the purposes of which it is made are either determined or abandoned, in relation to the defendant or (if there is more than one) in relation to each of the defendants.

(2) The court may discharge or vary (or further vary) a special measures direction if it appears to the court to be in the interests of justice to do so, and may do so either—

- (a) on an application made by a party to the proceedings, if there has been a material change of circumstances since the relevant time; or
- (b) on its own initiative.

(3) Nothing in section 11(2) and (3), 14(4) to (7) or 15(4) to (6) affects the power of the court to vary or discharge a special measures direction under subsection (2).

(4) The court must state in open court its reasons for—

- (a) giving or varying;
- (b) refusing an application for, or for the variation or discharge of; or
- (c) discharging,

a special measures direction and, if it is a Magistrates' Court, must cause the reasons to be entered in the register of its proceedings.

(5) Rules of court may make provision for—

- (a) uncontested applications to be determined by the court without a hearing;

- (b) preventing the renewal of an unsuccessful application for a special measures direction unless there has been a material change of circumstances;
- (c) expert evidence to be given in connection with an application for, or for varying or discharging, such a direction;
- (d) the manner in which confidential or sensitive information is to be treated in connection with such an application and in particular as to its being disclosed to, or withheld from, a party to the proceedings.

Special provisions relating to child witnesses.

8.(1) For the purposes of this section—

- (a) a witness in criminal proceedings is a “child witness” if he is an eligible witness by reason of section 3(1)(a) (whether or not he is an eligible witness by reason of any other provision of section 3 or 4);
- (b) a child witness is “in need of special protection” if the offence (or any of the offences) to which the proceedings relate—
 - (i) is a sexual offence; or
 - (ii) falls within Part XI of the Criminal Offences Act (Offences Against the Person);
- (c) a “relevant recording”, in relation to a child witness, is a video recording of an interview of the witness made with a view to its admission as evidence in chief of the witness.

(2) If the court, in making a determination for the purposes of section 6(2), determines that a witness in criminal proceedings is a child witness, the court must—

- (a) first have regard to subsections (3) to (7) of this section; and
- (b) then have regard to section 6(2).

(3) For the purposes of section 6(2), as it then applies to the witness, any special measures required to be applied in relation to him by virtue of this section are to be treated as if they were measures determined by the court, pursuant to section 6(2)(a) and (b)(i), to be ones that (whether on their own or with any other special measures) would be likely to maximise, so far as practicable, the quality of his evidence.

(4) The primary rule in the case of a child witness is that the court must give a special measures direction in relation to the witness which—

- (a) provides for any relevant recording to be admitted under section 14 (Video recorded evidence in chief); and
- (b) provides for any evidence given by the witness in the proceedings which is not given by means of a video recording (whether in chief or otherwise) to be given by means of a live link in accordance with section 11.

(5) The primary rule is subject to the following limitations—

- (a) the requirement in subsection (4)(a) or (b) is subject to the availability (within the meaning of section 5(2)) of the special measure in question in relation to the witness;
- (b) the requirement in subsection (4)(a) is subject to section 14(2); and
- (c) except in relation to a child witness in need of special protection, the rule 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 witness's evidence so far as practicable.

(6) If a child witness is in need of special protection by virtue of subsection (1)(b)(i), any special measures direction given by the court which complies with subsection (4)(a) must in addition provide for the special measure available under section 15 (Video recorded cross-examination or re-examination) to apply in relation to—

- (a) any cross-examination of the witness otherwise than by the defendant in person; and
- (b) any subsequent re-examination.

(7) The requirement in subsection (6)—

- (a) has effect subject to the availability (within the meaning of section 5(2)) of that special measure in relation to the witness; and
- (b) does not apply if the witness has informed the court that he does not want that special measure to apply in relation to him.

(8) If a special measures direction is given in relation to a child witness who is an eligible witness by reason only of section 3(1)(a), then—

- (a) subject to subsection (9); and
- (b) unless the witness has already begun to give evidence in the proceedings,

the direction ceases to have effect when the witness attains the age of 17.

(9) If a special measures direction is given in relation to a child witness who is an eligible witness by reason only of section 3(1)(a) and—

- (a) the direction provides for—
 - (i) any relevant recording to be admitted under section 14 as evidence in chief of the witness; or
 - (ii) the special measure available under section 15 to apply in relation to the witness; and
- (b) (if it provides for that special measure to so apply) the witness is still under the age of 17 when the video recording is made for the purposes of section 15,

then, so far as it provides as mentioned in paragraph (a)(i) or (ii), the direction continues to have effect in accordance with section 6(1) even though the witness subsequently attains that age.

Extension of section 8 to certain witnesses over 17.

9.(1) For the purposes of this section—

- (a) a witness in criminal proceedings (other than the defendant) is a “qualifying witness” if he—
 - (i) is not an eligible witness at the time of the hearing (as defined in section 3(3)); but
 - (ii) was under the age of 17 when a relevant recording was made;
- (b) a qualifying witness is “in need of special protection” if the offence (or any of the offences) to which the proceedings relate—
 - (i) is a sexual offence; or
 - (ii) falls within Part XI of the Criminal Offences Act (Offences Against the Person); and

- (c) a “relevant recording”, in relation to a witness, is a video recording of an interview of the witness made with a view to its admission as evidence in chief of the witness.

(2) Subsections (2) to (4) of section 8 apply (so far as they relate to the giving of a direction that complies with subsection (4)(a) of that section) to a qualifying witness in respect of the relevant recording as they apply to a child witness (within the meaning of that section).

(3) Subsection (5) of section 8 applies (so far as it relates to the giving of such a direction) to a qualifying witness in need of special protection as it applies to a child witness in need of special protection (within the meaning of that section).

(4) Subsections (6) and (7) of section 8 apply to a qualifying witness in need of special protection by virtue of subsection (1)(b)(i) of this section as they apply to a child witness as mentioned in subsection (6) of that section.

Special measures

Screening witness from defendant.

10.(1) Subject to subsection (2), a special measures direction may provide for the witness, while giving testimony or being sworn in court, to be prevented by means of a screen or other arrangement from seeing the defendant.

(2) The screen or other arrangement provided under subsection (1) must not prevent the witness from being able to see, and to be seen by—

- (a) the judge or justices (or both) and the jury (if there is one);
- (b) legal representatives acting in the proceedings; and
- (c) any interpreter or other person appointed to assist the witness.

(3) If 2 or more legal representatives are acting for a party to the proceedings, subsection (2)(b) is satisfied in relation to those representatives if the witness is able at all material times to see and be seen by at least one of them.

Evidence by live link.

11.(1) A special measures direction may provide for the witness to give evidence by means of a live link.

(2) If a direction provides for the witness to give evidence by means of a live link, the witness may not give evidence in any other way without the permission of the court.

(3) The court may give permission for the purposes of subsection (2) if it appears to the court to be in the interests of justice to do so, and may do so either—

- (a) on an application 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.

(4) In this section, “live link” means a live television link or other arrangement whereby a witness, while absent from the courtroom or other place where the proceedings are being held, is able to see and hear a person there and to be seen and heard by the persons specified in section 10(2)(a) to (c).

Evidence given in private.

12.(1) A special measures direction may provide for the exclusion from the court, during the giving of the witness’s evidence, of persons of any description specified in the direction.

(2) The persons who may be excluded under subsection (1) do not include—

- (a) the defendant;
- (b) legal representatives acting in the proceedings;
- (c) any interpreter or other person appointed by the court to assist the witness.

(3) If a special measures direction provides for representatives of news gathering or reporting organisations to be excluded, it must be expressed in relation to a named person who—

- (a) is a representative of the organisation; and
- (b) has been nominated for the purpose by the organisations,

unless it appears to the court that no such nomination has been made.

(4) A special measures direction may only provide for the exclusion of persons under this section if—

- (a) the proceedings relate to a sexual offence; or
- (b) it appears to the court that there are reasonable grounds for believing that any person other than the defendant has sought, or will seek, to intimidate the witness in connection with testifying in the proceedings.

(5) Any proceedings from which persons are excluded under this section (whether or not those persons include representatives of news gathering or reporting organisations) are, despite the exclusion, to be taken to be held in public for the purposes of any privilege or exemption from liability available in respect of fair, accurate and contemporaneous reports of legal proceedings held in public.

Removal of wigs and gowns.

13. A special measures direction may provide for the wearing of wigs or gowns to be dispensed with during the giving of the witness's evidence.

Video recorded evidence in chief.

14.(1) Subject to subsection (2), a special measures direction may provide for a video recording of an interview of the witness to be admitted as evidence in chief of the witness.

(2) A special measures direction may not provide for a video recording, or a part of such a recording, to be admitted under this section if the court is of the opinion, having regard to all the circumstances, that in the interests of justice the recording, or that part of it, should not be so admitted.

(3) In considering for the purposes of subsection (2) whether any part of a recording should not be admitted under this section, the court must consider whether any prejudice to the defendant which might result from that part being so admitted is outweighed by the desirability of showing the whole, or substantially the whole, of the recorded interview.

(4) If a special measures direction provides for a recording to be admitted under this section, the court may nevertheless subsequently direct that it is not to be so admitted if—

- (a) it appears to the court that—
 - (i) the witness will not be available for cross-examination; and
 - (ii) the parties to the proceedings have not agreed that there is no need for the witness to be so available; or

- (b) any rules of court requiring disclosure of the circumstances in which the recording was made have not been complied with to the satisfaction of the court.

(5) If a recording is admitted under this section—

- (a) the witness must be called by the party tendering it in evidence, unless—
 - (i) a special measures direction provides for the witness's evidence on cross-examination to be given otherwise than by testimony in court; or
 - (ii) the parties to the proceedings have agreed as mentioned in subsection (4)(a)(ii); and
- (b) the witness may not give evidence in chief otherwise than by means of the recording—
 - (i) as to any matter which, in the opinion of the court, has been dealt with adequately in the witness's recorded testimony; or
 - (ii) without the permission of the court, as to any other matter which, in the opinion of the court, is dealt with in that testimony.

(6) If, pursuant to subsection (2), a special measures direction provides for part only of a recording to be admitted, references in subsections (4) and (5) to the recording or to the witness's recorded testimony are references to the part of the recording or testimony which is to be so admitted.

(7) The court may give permission for the purposes of subsection (5)(b)(ii) if it appears to the court to be in the interests of justice to do so, and may do so either—

- (a) on an application 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.

(8) The court may, in giving permission for the purposes of subsection (5)(b)(ii), direct that the evidence in question is to be given by the witness by means of a live link, and section 11 applies in relation to that evidence as it applies in relation to evidence which is to be given in accordance with a special measures direction.

(9) A Magistrates' Court inquiring into an offence as examining justices under section 127 of the Criminal Procedure Act or section 22 of the Magistrates' Court Act may consider any video recording in relation to which it is proposed to apply for a special measures direction providing for it to be admitted at the trial in accordance with this section.

(10) Nothing in this section affects the admissibility of any video recording which would be admissible apart from this section.

Video recorded cross-examination or re-examination.

15.(1) If a special measures direction provides for a video recording to be admitted under section 14 as evidence in chief of the witness, the direction may also provide—

- (a) for any cross-examination of the witness, and any re-examination, to be recorded by means of a video recording; and
- (b) for such a recording to be admitted, so far as it relates to any such cross-examination or re-examination, as evidence of the witness under cross-examination or on re-examination, as the case may be.

(2) A recording referred to in subsection (1) must be made in the presence of such persons as rules of court or the direction may provide and in the absence of the defendant, but in circumstances in which—

- (a) the judge or magistrate and legal representatives acting in the proceedings are able to see and hear the examination of the witness and to communicate with the persons in whose presence the recording is being made; and
- (b) the defendant is able to see and hear any such examination and to communicate with any legal representative acting for him.

(3) If 2 or more legal representatives are acting for a party to the proceedings, subsection (2)(a) and (b) are satisfied in relation to those representatives if at all material times they are satisfied in relation to at least one of them.

(4) If a special measures direction provides for a recording to be admitted under this section, the court may nevertheless subsequently direct that it is not to be so admitted if any requirement of subsection (2) or rules of court or the direction has not been complied with to the satisfaction of the court.

(5) If in pursuance of subsection (1) a recording has been made of any examination of the witness, the witness may not be subsequently cross-examined or re-examined in respect of any evidence given by the witness in the proceedings unless the court gives a further special measures direction making a provision as mentioned in subsection (1)(a) and (b) in relation to any subsequent cross-examination, and re-examination, of the witness.

(6) The court may only give such a further direction if it appears to the court—

- (a) that the proposed cross-examination is sought by a party to the proceedings as a result of that party having become aware, since the time when the original recording was made in pursuance of subsection (1), of a matter which that party could not with reasonable diligence have ascertained by then; or
- (b) that for any other reason it is in the interests of justice to give the further direction.

(7) This section does not apply in relation to any cross-examination of the witness by the defendant in person.

Examination of witness through intermediary.

16.(1) A special measures direction may provide for any examination of the witness to be conducted through an interpreter or other person approved by the court for the purposes of this section (“an intermediary”).

(2) The function of an intermediary is to communicate—

- (a) to the witness, questions put to the witness; and
- (b) to any person asking such questions, the answers given by the witness in reply to them,

and to explain such questions or answers so far as necessary to enable them to be understood by the witness or person.

(3) Any examination of the witness pursuant to subsection (1) must take place in the presence of such persons as rules of court or the direction provide, but so that—

- (a) the judge or magistrate and legal representatives acting in the proceedings are able to see and hear the examination of the witness and to communicate with the intermediary; and

- (b) (except in the case of a video recorded examination) the jury (if there is one) are able to see and hear the examination of the witness.

(4) If 2 or more legal representatives are acting for a party to the proceedings, subsection (3)(a) is satisfied in relation to those representatives if at all material times it is satisfied in relation to at least one of them.

(5) A person may not act as an intermediary in a particular case except after making a declaration, in a form prescribed by rules of court, that he will faithfully perform his function as intermediary.

(6) Subsection (1) does not apply to an interview of the witness which is recorded by means of a video recording with a view to its admission as evidence in chief of the witness; but a special measures direction may provide for such a recording to be admitted under section 15 if the interview was conducted through an intermediary and—

- (a) that person complied with subsection (5) before the interview began; and
- (b) the court's approval for the purposes of this section is given before the direction is given.

(7) Part XX of the Criminal Offences Act (Perjury and False Statements) 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; and for this purpose, if a person acts as an intermediary in any proceeding which is not a judicial proceeding for the purposes of that section, that proceeding is to be taken to be part of the judicial proceeding in which the witness's evidence is given.

Aids to communication.

17. A special measures direction may provide for the witness, while giving evidence to be provided with a device the court considers appropriate with a view to enabling questions or answers to be communicated to or by the witness despite any disability or disorder or other impairment which the witness has or suffers from.

Status of evidence given under special measures.

18.(1) Subsections (2) to (4) apply to a statement made by a witness in criminal proceedings which, in accordance with a special measures direction, is not made by the witness in direct oral testimony in court but forms part of the witness's evidence in those proceedings.

(2) The statement is to be treated as if made by the witness in direct oral testimony in court; and accordingly it is—

- (a) admissible evidence of any fact of which such testimony from the witness would be admissible;
- (b) not capable of corroborating any other evidence given by the witness.

(3) Subsection (2) applies to a statement admitted under section 14 or 15 which is not made by the witness on oath even though it would have been required to be made on oath if made by the witness in direct oral testimony in court.

(4) In estimating the weight (if any) to be attached to the statement, the court must have regard to all the circumstances from which an inference can reasonably be drawn.

(5) If any statement made by a person on oath in any proceeding which is not a judicial proceeding for the purposes of Part XX of the Criminal Offences Act (Perjury and False Statements) is received in evidence in pursuance of a special measures direction, that proceeding is to be taken for the purposes of that section to be part of the judicial proceeding in which the statement is so received in evidence.

(6) If in any proceeding which is not a judicial proceeding for the purposes of that Part—

- (a) a person wilfully makes a false statement otherwise than on oath which is subsequently received in evidence in pursuance of a special measures direction; and
- (b) the statement is made in such circumstances that had it been given on oath in any such judicial proceeding that person would have been guilty of perjury,

the person commits an offence and is liable on summary conviction to imprisonment for 6 months, or the statutory maximum fine, or both.

(7) In this section “statement” includes any representation of fact, whether made in words or otherwise.

(8) In relation to a person under the age of 14, subsection (6) has effect as if for the words “statutory maximum fine” there were substituted “a fine at level 3 on the standard scale”.

Special measures : Warning to jury.

19. If on a trial on indictment with a jury evidence has been given in accordance with a special measures direction, the judge must give the jury such warning (if any) as the judge considers necessary to ensure that the fact that the direction was given in relation to the witness does not prejudice the defendant.

PART 3 - PROTECTION OF WITNESSES GENERALLY

Use of live link for evidence of certain defendant persons

Live link directions.

20.(1) This section applies to any proceedings (whether in a Magistrates' Court or before the Supreme Court) against a person for an offence.

(2) The court may, on the application of the defendant, give a live link direction if it is satisfied that—

- (a) the conditions in subsection (4) or, as the case may be, subsection (5) are met in relation to the defendant; and
- (b) it is in the interests of justice for the defendant to give evidence through a live link.

(3) A live link direction is a direction that any oral evidence to be given before the court by the defendant is to be given through a live link.

(4) If the defendant is aged under 18 when the application is made, the conditions are that—

- (a) his ability to participate effectively in the proceedings as a witness giving oral evidence in court is compromised by his level of intellectual ability or social functioning; and
- (b) use of a live link would enable him to participate more effectively in the proceedings as a witness.

(5) If the defendant has attained the age of 18 when the application is made, the conditions are that—

- (a) he suffers from a mental disorder or otherwise has a significant impairment of intelligence and social function;
- (b) he is for that reason unable to participate effectively in the proceedings as a witness giving oral evidence in court; and
- (c) use of a live link would enable him to participate more effectively in the proceedings as a witness.

(6) While a live link direction has effect the defendant may not give oral evidence before the court in the proceedings otherwise than through a live link.

(7) The court may discharge a live link direction at any time before or during any hearing to which it applies if it appears to the court to be in the interests of justice to do so, without affecting the power to give a further live link direction in relation to the defendant.

(8) The court may exercise the power conferred by subsection (7) on its own initiative or on an application by a party.

(9) The court must state in open court its reasons for—

- (a) giving or discharging a live link direction; or
- (b) refusing an application for or for the discharge of a live link direction,

and if it is a Magistrates' Court, must cause those reasons to be entered in the register of its proceedings.

Meaning of “live link”.

21.(1) In section 20 “live link” means an arrangement by which the defendant, while absent from the place where the proceedings are being held, is able—

- (a) to see and hear a person there; and
- (b) to be seen and heard by the persons mentioned in subsection (2),

and for this purpose any impairment of eyesight or hearing is to be disregarded.

(2) The persons are—

- (a) the judge or magistrate and the jury (if there is one);
- (b) if there are 2 or more defendant in the proceedings, each of the other defendant;
- (c) legal representatives acting in the proceedings; and
- (d) any interpreter or other person appointed by the court to assist the defendant.

Protection of witnesses from cross-examination by defendant in person

Complainants in proceedings for sexual offences.

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

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

Child complainants and other child witnesses.

23.(1) No person charged with an offence to which this section applies may in any criminal proceedings cross-examine in person a protected witness, either—

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

(2) For the purposes of subsection (1) a “protected witness” is a witness who—

- (a) is the complainant or is alleged to have been a witness to the commission of the offence to which this section applies; and
- (b) is a child or falls to be cross-examined after giving evidence in chief—
 - (i) by means of a video recording made (for the purposes of section 14) at a time when the witness was a child; or
 - (ii) in any other way at any such time.

(3) The offences to which this section applies are—

- (a) any offence under Part XII of the Criminal Offences Act (Sexual Offences);
- (b) an offence under Part XI of the Criminal Offences Act (Offences Against the Person);

- (c) any other offence that involves an assault on, or injury or a threat of injury to, any person.

(4) In this section “child” means—

- (a) if the offence falls within subsection (3)(a), a person under the age of 18;
- (b) if the offence falls within subsection (3)(b) or (c), a person under the age of 14.

(5) For the purposes of this section “witness” includes a witness who is charged with an offence in the proceedings.

Direction prohibiting defendant from cross-examining particular witness.

24.(1) This section applies if, in a case in which neither section 22 or 23 operates to prevent a defendant in any criminal proceedings from cross-examining a witness in person—

- (a) the prosecutor applies for the court to give a direction under this section in relation to the witness; or
- (b) the court on its own initiative raises the issue whether such a direction should be given.

(2) If it appears to the court—

- (a) that the quality of evidence given by the witness on cross-examination—
 - (i) is likely to be diminished if the cross-examination is conducted by the defendant in person; and
 - (ii) would be likely to be improved if a direction were given under this section; and
- (b) that it would not be contrary to the interests of justice to give such a direction,

the court may give a direction prohibiting the defendant from cross-examining the witness in person.

(3) In deciding whether subsection (2)(a) applies in the case of a witness the court must have regard, in particular, to—

- (a) any views expressed by the witness as to whether or not the witness is content to be cross-examined by the defendant in person;
- (b) the nature of the questions likely to be asked, having regard to the issues in the proceedings and the defence case advanced so far (if any);
- (c) any behaviour on the part of the defendant at any stage of the proceedings, both generally and in relation to the witness;
- (d) any relationship between the witness and the defendant;
- (e) whether any person other than the defendant is or has at any time been charged in the proceedings with a sexual offence or an offence to which section 23 applies, and (if so) whether section 22 or 23 operates or would have operated to prevent that person from cross-examining the witness in person;
- (f) any direction under section 6 which the court has given, or proposes to give, in relation to the witness.

(4) For the purposes of this section–

- (a) “witness”, in relation to a defendant, does not include any other person who is charged with an offence in the proceedings; and
- (b) any reference to the quality of a witness’s evidence is to be construed in accordance with section 3(2)(a).

Further provisions about directions under section 24.

25.(1) Subject to subsection (2), a direction has binding effect from the time it is made until the witness to whom it applies is discharged.

(2) The court may discharge a direction if it appears to the court to be in the interests of justice to do so, and may do so either–

- (a) on an application made by a party to the proceedings, if there has been a material change of circumstances since the relevant time; or
- (b) on its own initiative.

(3) The court must state in open court its reasons for–

- (a) giving;

- (b) refusing an application for, or for the discharge of; or
- (c) discharging,

a direction and, if it is a Magistrates' Court, must cause the reasons to be entered in the register of its proceedings.

- (4) Rules of court may make provision for—
 - (a) uncontested applications to be determined by the court without a hearing;
 - (b) preventing the renewal of an unsuccessful application for a direction unless there has been a material change of circumstances;
 - (c) expert evidence to be given in connection with an application for, or for discharging, a direction;
 - (d) the manner in which confidential or sensitive information is to be treated in connection with such an application and in particular as to its being disclosed to, or withheld from, a party to the proceedings.
- (5) In this section “direction” means a direction under section 24.

Defence representation for purposes of cross-examination.

26.(1) This section applies if a defendant is prevented from cross-examining a witness in person by virtue of section 22, 23 or 24.

- (2) If it appears to the court that this section applies, it must—
 - (a) invite the defendant to arrange for a legal representative to act for him for the purpose of cross-examining the witness; and
 - (b) require the defendant to notify the court, by the end of a period specified by the court, whether a legal representative is to act for him for that purpose.
- (3) If by the end of the period specified under subsection (2)(b) either –
 - (a) the defendant has notified the court that no legal representative is to act for him for the purpose of cross-examining the witness;
or

- (b) no notification has been received by the court and it appears to the court that no legal representative is to so act,

the court must consider whether it is necessary in the interests of justice for the witness to be cross-examined by a legal representative appointed to represent the interests of the defendant.

(4) If the court determines that it is necessary for the witness to be so cross-examined, the court must choose and appoint a legal representative to cross-examine the witness in the interests of the defendant.

(5) In the circumstances described in subsection (4)–

- (a) a person so appointed is not responsible to the defendant;
- (b) the court may order such sums as appear to the court to be reasonably necessary to cover the proper fee or costs of the legal representative and any expenses incurred in providing him with evidence or other material in connection with his appointment to be paid out of public funds.

(6) Rules of court may make provision–

- (a) as to the time when, and the manner in which, subsection (2) is to be complied with;
- (b) in connection with the appointment and payment of a legal representative under subsection (4), and in particular for securing that a person so appointed is provided with evidence or other material relating to the proceedings.

Cross-examination: Warning to jury.

27. If on a trial on indictment with a jury a defendant is prevented from cross-examining a witness in person by virtue of section 22, 23 or 24, the judge must give the jury such warning (if any) as the judge considers necessary to ensure that the defendant is not prejudiced–

- (a) by any inferences that might be drawn from the fact that the defendant has been prevented from cross-examining the witness in person;
- (b) if the witness has been cross-examined by a legal representative appointed under section 26(4), by the fact that the cross-examination was carried out by such a legal representative and not by a person acting as the defendant's own legal representative.

Protection of complainants in proceedings for sexual offences

Restriction on evidence or questions about complainant's sexual history.

28.(1) If at a trial a person is charged with a sexual offence, then, except with the leave of the court—

- (a) no evidence may be adduced; and
- (b) no question may be asked in cross-examination, by or on behalf of any defendant at the trial,

about any sexual behaviour of the complainant.

(2) The court may give leave in relation to any evidence or question only on an application made by or on behalf of a defendant, and may not give such leave unless it is satisfied—

- (a) that subsection (3) or (5) applies; and
- (b) that a refusal of leave might have the result of rendering unsafe a conclusion of the jury or (as the case may be) the court on any relevant issue in the case.

(3) This subsection applies if the evidence or question relates to a relevant issue in the case and either—

- (a) that issue is not an issue of consent;
- (b) it is an issue of consent and the sexual behaviour of the complainant to which the evidence or question relates is alleged to have taken place at or about the same time as the event which is the subject matter of the charge against the defendant; or
- (c) it is an issue of consent and the sexual behaviour of the complainant to which the evidence or question relates is alleged to have been, in any respect, so similar to—
 - (i) any sexual behaviour of the complainant which (according to evidence adduced or to be adduced by or on behalf of the defendant) took place as part of the event which is the subject matter of the charge against the defendant; or

- (ii) any other sexual behaviour of the complainant which (according to such evidence) took place at or about the same time as that event,

that the similarity cannot reasonably be explained as a coincidence.

(4) For the purposes of subsection (3) no evidence or question is to be regarded as relating to a relevant issue in the case if it appears to the court to be reasonable to assume that the purpose (or main purpose) for which it would be adduced or asked is to establish or elicit material for impugning the credibility of the complainant as a witness.

(5) This subsection applies if the evidence or question—

- (a) relates to any evidence adduced by the prosecution about any sexual behaviour of the complainant; and
- (b) in the opinion of the court, would go no further than is necessary to enable the evidence adduced by the prosecution to be rebutted or explained by or on behalf of the defendant.

(6) For the purposes of subsections (3) and (5) the evidence or question must relate to a specific instance (or specific instances) of alleged sexual behaviour on the part of the complainant.

(7) If this section applies in relation to a trial by virtue of the fact that one or more of a number of persons charged in the proceedings is or are charged with a sexual offence□

- (a) it ceases to apply if the prosecutor decides not to proceed with the case against that person or those persons in respect of that charge; but
- (b) it does not cease to apply upon that person or those persons pleading guilty to, or being convicted of, that charge.

(8) Nothing in this section authorises any evidence to be adduced or any question to be asked which cannot be adduced or asked apart from this section.

Interpretation and application of section 28.

29.(1) In section 28—

- (a) “relevant issue in the case” means any issue falling to be proved by the prosecution or defence in the trial of the defendant;

- (b) “issue of consent” means any issue whether the complainant in fact consented to the conduct constituting the offence with which the defendant is charged;
- (c) “sexual behaviour” means any sexual behaviour or other sexual experience, whether or not involving any defendant or other person, but excluding (except in section 28(3)(c)(i) and (5)(a)) anything alleged to have taken place as part of the event which is the subject matter of the charge against the defendant; and
- (d) subject to any order made under subsection (2), “sexual offence” has the meaning given it in section 2.

(2) The Minister may by order make any provision he considers appropriate for adding or removing, for the purposes of section 28, any offence to or from the offences which are sexual offences for the purposes of this Act.

(3) Section 28 applies in relation to the following proceedings as it applies to a trial—

- (a) proceedings before a Magistrates’ Court inquiring into an offence as examining justices;
- (b) any hearing held between conviction and sentencing for the purpose of determining matters relevant to the court’s decision as to how the defendant is to be dealt with; and
- (c) the hearing of an appeal,

and references in this section and section 28 to a person charged with an offence include a person convicted of an offence.

Procedure on applications under section 28.

30.(1) An application for leave under section 28 must be heard in private and in the absence of the complainant.

(2) If such an application has been determined, the court must state in open court (but in the absence of the jury, if there is one)—

- (a) its reasons for giving, or refusing, leave; and
- (b) if it gives leave, the extent to which evidence may be adduced or questions asked in pursuance of the leave,

and, if it is a Magistrates’ Court, must cause those matters to be entered in the register of its proceedings.

- (3) Rules of court may make provision—
- (a) requiring applications for leave to specify, in relation to each item of evidence or question to which they relate, particulars of the grounds on which it is asserted that leave should be given by virtue of subsection (3) or (5) of section 28;
 - (b) enabling the court to request a party to the proceedings to provide the court with information which it considers would assist it in determining an application for leave;
 - (c) for the manner in which confidential or sensitive information is to be treated in connection with such an application, and in particular as to its being disclosed to, or withheld from, parties to the proceedings.

PART 4 - REPORTING RESTRICTIONS (GENERAL)

Restrictions on reporting alleged offences involving persons under 18.

31.(1) This section applies (subject to subsection (3)) when a criminal investigation has begun in respect of an alleged offence against the law of Gibraltar.

(2) No matter relating to any person involved in the offence may, while he is under the age of 18, be included in any publication if it is likely to lead members of the public to identify him as a person involved in the offence.

(3) The restrictions imposed by subsection (2) cease to apply once there are proceedings in a court in respect of the offence.

(4) For the purposes of subsection (2), a reference to a person involved in the offence is to—

- (a) a person by whom the offence is alleged to have been committed; or
- (b) if this paragraph applies to the publication in question by virtue of subsection (5)—
 - (i) a person against or in respect of whom the offence is alleged to have been committed; or
 - (ii) a person who is alleged to have been a witness to the commission of the offence; except that paragraph (b)(i)

does not include a person in relation to whom section 38 (Restriction on reporting of identity of victims of certain offences) applies in connection with the offence.

(5) The matters relating to a person in relation to which the restrictions imposed by subsection (2) apply (if their inclusion in any publication is likely to have the result mentioned in that subsection) include in particular—

- (a) his name;
- (b) his address;
- (c) the identity of any school or other educational establishment attended by him;
- (d) the identity of any place of work; and
- (e) any still or moving picture of him.

(6) Subject to subsection (7), the court may by order dispense, to the extent specified in the order, with the restrictions imposed by subsection (2) in relation to a person if it is satisfied that it is necessary in the interests of justice to do so.

(7) When deciding whether to make an order under subsection (6) dispensing (to any extent) with the restrictions imposed by subsection (2) in relation to a person, the court must have regard to the welfare of that person.

(8) If the Magistrates' Court makes or refuses to make an order under subsection (6), any person who was a party to the proceedings on the application for the order may, in accordance with rules of court, appeal to the Supreme Court against that decision and appear or be represented at the hearing of the appeal.

(9) In this section—

- (a) “offence” includes an act or omission outside Gibraltar which, if committed in Gibraltar, would be an offence against the law of Gibraltar;
- (b) any reference to a criminal investigation, in relation to an alleged offence, is to an investigation conducted by police officers, or other persons charged with the duty of investigating offences, with a view to ascertaining whether a person should be charged with the offence.

Power to restrict reporting of criminal proceedings involving persons under 18.

32.(1) This section applies in relation to any criminal proceedings in any court in Gibraltar.

(2) The court may direct that no matter relating to any person concerned in the proceedings may, while he is under the age of 18, be included in any publication if it is likely to lead members of the public to identify him as a person concerned in the proceedings.

(3) The court or an appellate court may by direction (“an excepting direction”) dispense, to any extent specified in the excepting direction, with the restrictions imposed by a direction under subsection (2) if it is satisfied that it is necessary in the interests of justice to do so.

(4) The court or an appellate court may also by direction (“an excepting direction”) dispense, to any extent specified in the excepting direction, with the restrictions imposed by a direction under subsection (2) if it is satisfied that—

- (a) their effect is to impose a substantial and unreasonable restriction on the reporting of the proceedings; and
- (b) it is in the public interest to remove or relax that restriction.

(5) No excepting direction may be given under subsection (4) by reason only of the fact that the proceedings have been determined in any way or have been abandoned.

(6) When deciding whether to make—

- (a) a direction under subsection (2) in relation to a person; or
- (b) an excepting direction under subsection (3) or (4) by virtue of which the restrictions imposed by a direction under subsection (2) would be dispensed with (to any extent) in relation to a person,

the court or (as the case may be) the appellate court must have regard to the welfare of that person.

(7) For the purposes of subsection (2) any reference to a person concerned in the proceedings is to a person—

- (a) against or in respect of whom the proceedings are taken; or
- (b) who is a witness in the proceedings.

(8) The matters relating to a person in relation to which the restrictions imposed by a direction under subsection (2) apply (if their inclusion in any publication is likely to have the result mentioned in that subsection) include in particular—

- (a) his name;
- (b) his address;
- (c) the identity of any school or other educational establishment attended by him;
- (d) the identity of any place of work; and
- (e) any still or moving picture of him.

(9) A direction under subsection (2) may be revoked by the court or an appellate court.

(10) An excepting direction—

- (a) may be given at the time the direction under subsection (2) is given or subsequently; and
- (b) may be varied or revoked by the court or an appellate court.

Power to restrict reports about certain adult witnesses in criminal proceedings.

33.(1) This section applies if in any criminal proceedings in any court in Gibraltar a party to the proceedings makes an application for the court to give a reporting direction in relation to a witness in the proceedings (other than the defendant) who has attained the age of 18.

(2) If the court determines—

- (a) that the witness is eligible for protection; and
- (b) that giving a reporting direction in relation to the witness is likely to improve—
 - (i) the quality of evidence given by the witness; or
 - (ii) the level of co-operation given by the witness to any party to the proceedings in connection with that party's preparation of its case,

the court may give a reporting direction in relation to the witness.

(3) For the purposes of this section a witness is eligible for protection if the court is satisfied—

- (a) that the quality of evidence given by the witness; or
- (b) the level of co-operation given by the witness to any party to the proceedings in connection with that party's preparation of its case, is likely to be diminished by reason of fear or distress on the part of the witness in connection with being identified by members of the public as a witness in the proceedings.

(4) In determining whether a witness is eligible for protection the court must take into account, in particular—

- (a) the nature and alleged circumstances of the offence to which the proceedings relate;
- (b) the age of the witness;
- (c) such of the following matters as appear to the court to be relevant, namely—
 - (i) the social and cultural background and ethnic origins of the witness;
 - (ii) the domestic and employment circumstances of the witness; and
 - (iii) any religious beliefs or political opinions of the witness;
- (d) any behaviour towards the witness on the part of—
 - (i) the defendant;
 - (ii) members of the family or associates of the defendant; or
 - (iii) any other person who is likely to be a defendant or a witness in the proceedings.

(5) In determining that question the court must in addition consider any views expressed by the witness.

(6) For the purposes of this section a reporting direction in relation to a witness is a direction that no matter relating to the witness may during the witness's lifetime be included in any publication if it is likely to lead members of the public to identify him as being a witness in the proceedings.

(7) The matters relating to a witness in relation to which the restrictions imposed by a reporting direction apply (if their inclusion in any publication is likely to have the result mentioned in subsection (6)) include in particular—

- (a) the witness's name;
- (b) the witness's address;
- (c) the identity of any educational establishment attended by the witness;
- (d) the identity of any place of work; and
- (e) any still or moving picture of the witness.

(8) In determining whether to give a reporting direction the court must consider—

- (a) whether it would be in the interests of justice to do so; and
- (b) the public interest in avoiding the imposition of a substantial and unreasonable restriction on the reporting of the proceedings.

(9) The court or an appellate court may by direction (“an excepting direction”) dispense, to any extent specified in the excepting direction, with the restrictions imposed by a reporting direction if—

- (a) it is satisfied that it is necessary in the interests of justice to do so; or
- (b) it is satisfied—
 - (i) that the effect of those restrictions is to impose a substantial and unreasonable restriction on the reporting of the proceedings; and
 - (ii) that it is in the public interest to remove or relax that restriction,

but no excepting direction may be given under paragraph (b) by reason only of the fact that the proceedings have been determined in any way or have been abandoned.

(10) A reporting direction may be revoked by the court or an appellate court.

- (11) An excepting direction–
- (a) may be given at the time the reporting direction is given or subsequently; and
 - (b) may be varied or revoked by the court or an appellate court.
- (12) In this section–
- (a) references to the quality of a witness’s evidence are to its quality in terms of completeness, coherence and accuracy (and for this purpose “coherence” refers to a witness’s ability in giving evidence to give answers which address the questions put to the witness and can be understood both individually and collectively);
 - (b) references to the preparation of the case of a party to any proceedings include, if the party is the prosecution, the carrying out of investigations into any offence at any time charged in the proceedings.

Restrictions on reporting directions given under this Act.

34.(1) Except as provided by this section, no publication may include a report of a matter falling within subsection (2).

- (2) The matters falling within this subsection are–
- (a) a direction under section 6, 20 or 24 or an order discharging, or in the case of a direction under section 6 varying, such a direction;
 - (b) proceedings–
 - (i) on an application for such a direction or order; or
 - (ii) if the court acts on its own initiative to determine whether to give or make any such direction or order.

(3) The court dealing with a matter falling within subsection (2) may order that subsection (1) is not to apply, or is not to apply to a specified extent, to a report of that matter.

- (4) If–
- (a) there is only one defendant in the relevant proceedings; and

- (b) he objects to the making of an order under subsection (3),

then—

- (c) the court must make the order if (and only if) satisfied after hearing the representations of the defendant that it is in the interests of justice to do so; and
- (d) if the order is made it does not apply to the extent that a report deals with any such objections or representations.

(5) If—

- (a) there are 2 or more defendants in the relevant proceedings; and
- (b) one or more of them object to the making of an order under subsection (3),

then—

- (c) the court must make the order if (and only if) satisfied after hearing the representations of each of the defendant that it is in the interests of justice to do so; and
- (d) if the order is made it does not apply to the extent that a report deals with any such objections or representations.

(6) Subsection (1) does not apply to the inclusion in a publication of a report of matters after the relevant proceedings are either—

- (a) determined (by acquittal, conviction or otherwise); or
- (b) abandoned, in relation to the defendant or (if there is more than one) in relation to each of the defendant.

(7) In this section “the relevant proceedings” means the proceedings to which any such direction as is mentioned in subsection (2) relates or would relate.

(8) Nothing in this section affects any prohibition or restriction by virtue of any other enactment on the inclusion of matter in a publication.

Offences relating to reporting.

35.(1) This section applies if a publication—

- (a) includes any matter in contravention of section 31(2) or of a direction under section 32(2) or 33(2); or

(b) includes a report in contravention of section 34.

(2) If the publication is a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical commits an offence.

(3) If the publication is a radio or television broadcast—

(a) any body corporate engaged in providing the service in which the broadcast is included; and

(b) any person having functions in relation to the broadcast corresponding to those of an editor of a newspaper, commits an offence.

(4) In the case of any other publication, any person publishing it commits an offence.

(5) A person who commits an offence under this section is liable on summary conviction to the statutory maximum fine.

(6) Proceedings for an offence under this section in respect of a publication falling within subsection (1)(b) may not be instituted otherwise than by or with the consent of the Attorney-General.

Defences relating to reporting.

36.(1) If a person is charged with an offence under section 35 it is a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication included the matter or report in question.

(2) If—

(a) a person is charged with an offence under section 35; and

(b) the offence relates to the inclusion of any matter in a publication in contravention of section 31(2),

it is a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the criminal investigation in question had begun.

(3) If—

(a) paragraphs (a) and (b) of subsection (2) apply; and

(b) the contravention of section 31(2) does not relate to either—

- (i) the person by whom the offence mentioned in that provision is alleged to have been committed; or
- (ii) (if the offence is one in relation to which section 38 applies) a person who is alleged to be a witness to the commission of the offence,

it is a defence to show to the satisfaction of the court that the inclusion in the publication of the matter in question was in the public interest on the ground that, to the extent that they operated to prevent that matter from being so included, the effect of the restrictions imposed by section 31(2) was to impose a substantial and unreasonable restriction on the reporting of matters connected with that offence.

(4) Subsection (5) applies if—

- (a) paragraphs (a) and (b) of subsection (2) apply; and
- (b) the contravention of section 31(2) relates to a person (“the protected person”) who is neither—
 - (i) the person mentioned in subsection (3)(b)(i); nor
 - (ii) a person within subsection (3)(b)(ii) who is under the age of 16.

(5) In a case mentioned in subsection (4), it is a defence, subject to subsection (6), to prove—

- (a) that written consent to the inclusion of the matter in question in the publication had been given—
 - (i) by an appropriate person, if at the time when the consent was given the protected person was under the age of 16; or
 - (ii) by the protected person, if that person was aged 16 or 17 at that time; and
- (b) if the consent was given by an appropriate person, that written notice had been previously given to that person drawing to his attention the need to consider the welfare of the protected person when deciding whether to give consent.

(6) The defence provided by subsection (5) is not available if—

- (a) the consent was given by an appropriate person and it is proved that written or other notice withdrawing the consent—
 - (i) was given to the appropriate recipient by any other appropriate person or by the protected person; and
 - (ii) was so given in sufficient time to enable the inclusion in the publication of the matter in question to be prevented; or
- (b) subsection (8) applies.

(7) If—

- (a) a person is charged with an offence under section 35; and
- (b) the offence relates to the inclusion of any matter in a publication in contravention of a direction under section 33(2),

it is a defence, unless subsection (8) applies, to prove that the person in relation to whom the direction was given had given written consent to the inclusion of that matter in the publication.

(8) Written consent is not a defence if it is proved that any person interfered—

- (a) with the peace or comfort of the person giving the consent; or
- (b) if the consent was given by an appropriate person, with the peace or comfort of either that person or the protected person, with intent to obtain the consent.

(9) In this section—

“appropriate person” means (subject to subsections (10) and (11)) a person who is a parent or guardian of the protected person;

“guardian”, in relation to the protected person, means any person who is not a parent of the protected person but who has parental responsibility for the protected person within the meaning of the Children Act 2009.

(10) If the protected person is a child who is looked after by the Care Agency, “an appropriate person” means a person who is—

- (a) a representative of the Agency; or

- (b) a parent or guardian of the protected person with whom the protected person is allowed to live.

(11) No person by whom the offence mentioned in section 31(2) is alleged to have been committed is, by virtue of subsections (9) or (10), an appropriate person for the purposes of this section.

(12) In this section “appropriate recipient”, in relation to a notice under subsection (6)(a), means—

- (a) the person to whom the notice giving consent was given;
- (b) the person by whom the matter in question was published (if different); or
- (c) any other person exercising, on behalf of the person mentioned in paragraph (b), any responsibility in relation to the publication of that matter,

and for this purpose “person” includes a body of persons and a partnership.

Decisions as to public interest in relation to reporting.

37.(1) If for the purposes of sections 31 to 34 it falls to a court to decide whether anything is (or, as the case may be, was) in the public interest, the court must have regard, in particular, to the matters referred to in subsection (2) (so far as relevant).

(2) Those matters are—

- (a) the interest in—
 - (i) the open reporting of crime;
 - (ii) the open reporting of matters relating to human health or safety; and
 - (iii) the prevention and exposure of miscarriages of justice;
- (b) the welfare of any person in relation to whom the relevant restrictions imposed by or under any of sections 31 to 34 apply or would apply (or, as the case may be, applied); and
- (c) any views expressed—
 - (i) by an appropriate person on behalf of a person within paragraph (b) who is under the age of 16 (“the protected person”); or

- (ii) by a person within that paragraph who has attained that age.

(3) In subsection (2) “appropriate person”, in relation to the protected person, has the same meaning as it has for the purposes of section 36.

PART 5 - REPORTING RESTRICTIONS (IDENTITY OF VICTIMS)

Restriction on reporting of identity of victims of certain offences.

38.(1) If an allegation has been made that an offence to which this section applies has been committed against a person, no matter relating to that person may during that person's lifetime be included in any publication, if it is likely to lead members of the public to identify that person as the person against whom the offence is alleged to have been committed.

(2) If a person is accused of an offence to which this section applies, no matter likely to lead members of the public to identify a person as the person against whom the offence is alleged to have been committed (“the complainant”) may during the complainant's lifetime be included in any publication.

(3) This section—

- (a) does not apply in relation to a person by virtue of subsection (1) at any time after a person has been accused of the offence; and
- (b) in its application in relation to a person by virtue of subsection (2), has effect subject to any direction given under section 40.

(4) The matters relating to a person in relation to which the restrictions imposed by subsection (1) or (2) apply, if their inclusion in any publication is likely to have the result mentioned in that subsection, include in particular—

- (a) the person's name;
- (b) the person's address;
- (c) the identity of any school or other educational establishment attended by the person;
- (d) the identity of any place of work; and
- (e) any still or moving picture of the person.

(5) Nothing in this section prohibits the inclusion in a publication of matter consisting only of a report of criminal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which the defendant is charged with the offence.

Offences to which restriction applies.

39. Section 38 applies to the following offences—

- (a) an offence under any provision of Part XII of the Criminal Offences Act;
- (b) an attempt to commit any of the offences included in paragraph (a);
- (c) a conspiracy to commit any of those offences;
- (d) incitement of another to commit any of those offences;
- (e) aiding, abetting, counselling or procuring the commission of any of those offences.

Power to displace section 38.

40.(1) If, before the commencement of a trial at which a person is charged with an offence to which section 38 applies, he or another person against whom the complainant may be expected to give evidence at the trial, applies to the judge for a direction under this subsection and satisfies the judge—

- (a) that the direction is required for the purpose of inducing persons who are likely to be needed as witnesses at the trial to come forward; and
- (b) that the conduct of the applicant's defence at the trial is likely to be substantially prejudiced if the direction is not given,

the judge must direct that section 38 does not, by virtue of the accusation alleging the offence in question, apply in relation to the complainant.

(2) If at a trial the judge is satisfied—

- (a) that the effect of section 38 is to impose a substantial and unreasonable restriction upon the reporting of proceedings at the trial; and
- (b) that it is in the public interest to remove or relax the restriction,

the judge must direct that that section does not apply to any matter specified in the direction.

(3) A direction must not be given under subsection (2) by reason only of the outcome of the trial.

(4) If a person who has been convicted of an offence and has given notice of appeal against the conviction, or notice of an application for leave so to appeal, applies to the appellate court for a direction under this subsection and satisfies the court—

- (a) that the direction is required for the purpose of obtaining evidence in support of the appeal; and
- (b) that the applicant is likely to suffer substantial injustice if the direction is not given,

the court must direct that section 38 does not, by virtue of an accusation which alleges an offence to which that section applies and is specified in the direction, apply in relation to a complainant so specified.

(5) A direction given under this section does not affect the operation of section 38 before the direction is given.

(6) In subsections (1) and (2), “judge” means—

- (a) in the case of an offence which is to be tried summarily or for which the mode of trial has not been determined, any magistrate;
- (b) in any other case, any judge of the Supreme Court.

(7) If, after the commencement of a trial at which a person is charged with an offence to which section 38 applies, a new trial of the person for that offence is ordered, the commencement of any previous trial is to be disregarded for the purposes of subsection (1).

Offences relating to reporting of identity of victims.

41.(1) If any matter is included in a publication in contravention of section 38, the following persons commit an offence and are liable on summary conviction to the statutory maximum fine—

- (a) if the publication is a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;
- (b) if the publication is a radio or television broadcast—

- (i) any body corporate engaged in providing the service in which the broadcast is included; and
 - (ii) any person having functions in relation to the broadcast corresponding to those of an editor of a newspaper;
- (c) in the case of any other publication, any person publishing it.

(2) If a person is charged with an offence under this section in respect of the inclusion of any matter in a publication, it is a defence, subject to subsection (3), to prove that the publication in which the matter appeared was one in respect of which the person against whom the offence mentioned in section 38 is alleged to have been committed had given written consent to the appearance of matter of that description.

(3) Written consent is not a defence if it is proved that any person interfered unreasonably with the peace or comfort of the person giving the consent, with intent to obtain it, or that person was under the age of 16 at the time when it was given.

(4) Proceedings for an offence under this section may not be instituted except by or with the consent of the Attorney-General.

(5) If a person is charged with an offence under this section it is a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication included the matter in question.

(6) If—

- (a) a person is charged with an offence under this section; and
- (b) the offence relates to the inclusion of any matter in a publication in contravention of section 38,

it is a defence to prove that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the allegation in question had been made.

(7) If an offence under this section committed by a corporate body is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) a director, manager, secretary or other similar officer of the body corporate; or
- (b) a person purporting to act in any such capacity,

he as well as the corporate body commits the offence and is liable to be proceeded against and punished accordingly.

(8) In relation to a body corporate whose affairs are managed by its members, “director” in subsection (7) means a member of the body corporate.

PART 6 - ANONYMITY OF WITNESSES

Rules relating to anonymity of witnesses.

42.(1) This Part provides for the making of witness anonymity orders in relation to witnesses in criminal proceedings.

(2) The common law rules relating to the power of a court to make an order for securing that the identity of a witness in criminal proceedings is withheld from the defendant (or, on a defence application, from other defendants) are abolished.

(3) Nothing in this Part affects the common law rules as to the withholding of information on the grounds of public interest immunity.

Witness anonymity orders.

43.(1) In this Part, a “witness anonymity order” is an order made by a court that requires specified measures to be taken in relation to a witness in criminal proceedings that 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—
- (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);
 - (ii) the jury (if there is one); or
 - (iii) any interpreter or other person appointed by the court to assist the witness;
 - (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) to (iii).
- (5) In this section “specified” means specified in the witness anonymity order concerned.

Applications for orders.

44.(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) If the 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) need not 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 legal representatives.

- (3) If the 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) need not 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) If 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) In subsection (4), “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) Subsection (6) does not prevent the court from hearing one or more parties in the absence of a defendant and his 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.

Conditions for making order.

45.(1) This section applies when 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 measures to be specified in the order are 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 taking of those measures would be consistent with the defendant receiving a fair trial.

(5) Condition C is that it is necessary to make the order in the interests of justice by reason of the fact that it appears to the court that—

- (a) it is important that the witness should testify; and
- (b) the witness would not testify if the order were not made.

(6) In determining whether the measures to be specified in the order are 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.

Relevant considerations.

46.(1) When deciding whether Conditions A to C in section 45 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) any other matters 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,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's identity by any means other than by making a witness anonymity order specifying the measures that are under consideration by the court.

Discharge or variation of order.

47.(1) A court that has made a witness anonymity order in relation to any criminal proceedings may 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 45 and 46 that applied to the making of the order.

- (2) The court may discharge or vary a witness anonymity order—
 - (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) In subsection (2), “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.

Warning to jury.

48.(1) Subsection (2) applies if, on a trial on indictment, 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.

Application of provisions etc.

Proceedings to which the rules apply.

49.(1) Sections 43 to 48 apply to criminal proceedings in which—

- (a) the trial or hearing begins on or after the day on which this Part comes into operation; or
- (b) the trial or hearing has begun, but has not ended, before that day.

(2) Section 50 applies to the proceedings mentioned in it that fall within subsection (1)(b).

Pre-commencement anonymity orders: Existing proceedings.

50.(1) This section has effect in relation to criminal proceedings in cases where—

- (a) the trial or hearing has begun, but has not ended, before commencement; and
- (b) the court has made a pre-commencement anonymity order in relation to a witness at the trial or hearing.

(2) Subsection (3) applies if the witness has not begun to give evidence under the terms of that order before commencement.

(3) In such a case the court—

- (a) must consider whether that order was one that the court could have made if this Part had been in operation at the material time;

- (b) if it considers that that order was one that it could have made in those circumstances, may direct that the order is to remain in place; and
- (c) otherwise, must discharge the order and consider whether instead it should make a witness anonymity order in relation to the witness in accordance with sections 43 to 46.

(4) A witness anonymity order made by virtue of subsection (3)(c) must be made so as to come into effect immediately on the discharge of the pre-commencement anonymity order.

(5) Subsections (6) and (7) apply if the witness began before commencement to give evidence under the terms of the order mentioned in subsection (1)(b) (whether or not he has finished doing so).

(6) In a case described in subsection (5), the court must consider whether the effect of that order is that the defendant has been prevented from receiving a fair trial, having regard (in particular) to—

- (a) whether the order was one that the court could have made if this Part had been in operation at the material time; and
- (b) whether the court should exercise any power to give a direction to the jury (if there is one) regarding the evidence given under the terms of the order.

(7) If the court determines that the defendant has been prevented from receiving a fair trial, it must give such directions as it considers appropriate for and in connection with bringing the trial or hearing to a conclusion.

(8) In this section, “pre-commencement anonymity order” means an order made under this Part before commencement that falls within section 43(2).

Pre-commencement anonymity orders: Appeals.

51.(1) This section applies if—

- (a) an appellate court is considering an appeal against a conviction in criminal proceedings in a case where the trial ended before commencement; and
- (b) the trial court made a pre-commencement anonymity order in relation to a witness at the trial.

(2) The appellate court—

- (a) may not treat the conviction as unsafe solely on the ground that the trial court had no power at common law to make the order mentioned in subsection (1)(b); but
- (b) must treat the conviction as unsafe if it considers that—
 - (i) the order was not one that the trial court could have made if this Part had been in operation at the material time; and
 - (ii) as a result of the order, the defendant did not receive a fair trial.

(3) In this section—

“trial court” means the court from which the appeal lies;

“pre-commencement anonymity order” has the meaning given by section 50(8).

PART 7 - MISCELLANEOUS PROVISIONS

Regulations, orders and rules of court.

52.(1) The Minister may make regulations and orders to implement this Act.

(2) Regulations and orders made by the Minister under this Act may make different provision for different cases or circumstances and may contain such incidental, supplemental, saving or transitional provisions as the Minister thinks fit.

(3) The Chief Justice may make any rules of court required by this Act or that the Chief Justice considers necessary or expedient for the purposes of this Act.

Application and savings.

53.(1) No Part of this Act, other than Part 6, applies to any proceedings for an offence in which the defendant was charged with the offence before the commencement of the relevant Part.

(2) Part 6 applies to criminal proceedings in which—

- (a) the trial or hearing begins on or after the commencement of Part 6; or

- (b) the trial or hearing has begun, but has not ended, before that day,

in accordance with sections 49 to 51.

- (3) Except as expressly provided in this Act, nothing in this Act affects—
 - (a) any power of a court to make an order, give directions or give leave of any description in relation to any witness (including a defendant);
 - (b) the operation of any rule of law relating to evidence in criminal proceedings;
 - (c) any power of a court to exclude evidence at its discretion (whether by preventing questions being put or otherwise) which is exercisable apart from this Act; or
 - (d) any prohibition or restriction imposed by virtue of any other enactment upon a publication or upon matter included in a radio or television broadcast.

(4) Nothing in Parts 2 to 5 affects any power of a court to make an order or give leave of any description, in the exercise of its inherent jurisdiction or otherwise—

- (a) in relation to a witness who is not an eligible witness; or
- (b) in relation to an eligible witness if the order is made or the leave is given otherwise than by reason of the fact that the witness is an eligible witness.

(5) Nothing in Parts 2 to 5 affects the continued operation in relation to a witness in proceedings that commenced before the commencement of the relevant Part of any order made or leave given by a court similar to a special measures order or to leave that can be given under any of those Parts.