



# Youth Justice and Criminal Evidence Act 1999

## 1999 CHAPTER 23

### PART II

#### GIVING OF EVIDENCE OR INFORMATION FOR PURPOSES OF CRIMINAL PROCEEDINGS

#### CHAPTER II

#### PROTECTION OF WITNESSES FROM CROSS-EXAMINATION BY ACCUSED IN PERSON

#### *Cross-examination on behalf of accused*

#### **38 Defence representation for purposes of cross-examination.**

- (1) This section applies where an accused is prevented from cross-examining a witness in person by virtue of section 34, 35 or 36.
- (2) Where it appears to the court that this section applies, it must—
  - (a) invite the accused to arrange for a legal representative to act for him for the purpose of cross-examining the witness; and
  - (b) require the accused to notify the court, by the end of such period as it may specify, whether a legal representative is to act for him for that purpose.
- (3) If by the end of the period mentioned in subsection (2)(b) either—
  - (a) the accused has notified the court that no legal representative is to act for him for the purpose of cross-examining the witness, or
  - (b) no notification has been received by the court and it appears to the court that no legal representative is to so act,

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

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**Changes to legislation:** Youth Justice and Criminal Evidence Act 1999, Cross Heading: Cross-examination on behalf of accused is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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- (4) If the court decides that it is necessary in the interests of justice for the witness to be so cross-examined, the court must appoint a qualified legal representative (chosen by the court) to cross-examine the witness in the interests of the accused.
- (5) A person so appointed shall not be responsible to the accused.
- (6) [<sup>F1</sup>Criminal Procedure Rules] may make provision—
- (a) as to the time when, and the manner in which, subsection (2) is to be complied with;
  - (b) in connection with the appointment of a legal representative under subsection (4), and in particular for securing that a person so appointed is provided with evidence or other material relating to the proceedings.
- (7) [<sup>F1</sup>Criminal Procedure Rules] made in pursuance of subsection (6)(b) may make provision for the application, with such modifications as are specified in the rules, of any of the provisions of—
- (a) Part I of the <sup>M1</sup>Criminal Procedure and Investigations Act 1996 (disclosure of material in connection with criminal proceedings), or
  - (b) the <sup>M2</sup>Sexual Offences (Protected Material) Act 1997.
- (8) For the purposes of this section—
- (a) any reference to cross-examination includes (in a case where a direction is given under section 36 after the accused has begun cross-examining the witness) a reference to further cross-examination; and
  - (b) “qualified legal representative” means a legal representative who has a right of audience (within the meaning of the <sup>M3</sup>Courts and Legal Services Act 1990) in relation to the proceedings before the court.

#### Textual Amendments

**F1** Words in s. 38(6)(7) substituted (1.9.2004) by Courts Act 2003 (c. 39), s. 110(1), Sch. 8 para. 384(f); S.I. 2004/2066, art. 2(c)(xix) (with art. 3)

#### Modifications etc. (not altering text)

**C1** S. 38 applied (with modifications) (31.10.2009) by The Youth Justice and Criminal Evidence Act 1999 (Application to Service Courts) Order 2009 (S.I. 2009/2083), arts. 1, 5, 6

#### Commencement Information

**I1** S. 38 wholly in force at 4.9.2000; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 38 in force at 4.9.2000 by S.I. 2000/2091, art. 2(c)

#### Marginal Citations

**M1** 1996 c. 25.  
**M2** 1997 c. 39.  
**M3** 1990 c. 41.

## 39 Warning to jury.

- (1) Where on a trial on indictment [<sup>F2</sup>with a jury] an accused is prevented from cross-examining a witness in person by virtue of section 34, 35 or 36, the judge must give the

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jury such warning (if any) as the judge considers necessary to ensure that the accused is not prejudiced—

- (a) by any inferences that might be drawn from the fact that the accused has been prevented from cross-examining the witness in person;
- (b) where the witness has been cross-examined by a legal representative appointed under section 38(4), by the fact that the cross-examination was carried out by such a legal representative and not by a person acting as the accused’s own legal representative.

(2) Subsection (8)(a) of section 38 applies for the purposes of this section as it applies for the purposes of section 38.

**Textual Amendments**

**F2** Words in s. 39(1) inserted (24.7.2006) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(3)(4), [Sch. 36 para. 76](#); [S.I. 2006/1835](#), art. 2(h)

**Modifications etc. (not altering text)**

**C2** S. 39 applied (with modifications) (31.10.2009) by [The Youth Justice and Criminal Evidence Act 1999 \(Application to Service Courts\) Order 2009 \(S.I. 2009/2083\)](#), arts. 1, 5, 6

**Commencement Information**

**I2** S. 39 wholly in force at 4.9.2000; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 39 in force at 4.9.2000 by [S.I. 2000/2091](#), art. 2(d)

**40 Funding of defence representation.**

(1) In section 19(3) of the <sup>M4</sup>Prosecution of Offences Act 1985 (regulations authorising payments out of central funds), after paragraph (d) there shall be inserted—

“(e) to cover the proper fee or costs of a legal representative appointed under section 38(4) of the Youth Justice and Criminal Evidence Act 1999 (defence representation for purposes of cross-examination) and any expenses properly incurred in providing such a person with evidence or other material in connection with his appointment.”

<sup>F3</sup>(2) .....

**Textual Amendments**

**F3** S. 40(2) repealed (2.4.2001) by [1999 c. 22](#), s. 106, [Sch. 15 Pt. I](#) (with [Sch. 14 para. 7\(2\)](#), 36(9)); [S.I. 2001/916](#), art. 3(b) (with [Sch. 2 para. 2](#))

**Commencement Information**

**I3** S. 40 wholly in force at 4.9.2000; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes and s. 40(1) in force at Royal Assent, see s. 68(4)(b)(c); s. 40 in force at 4.9.2000 by [S.I. 2000/2091](#), art. 2(e)

**Marginal Citations**

**M4** [1985 c. 23](#).

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 33BA33BB inserted by [2009 c. 25 s. 104\(1\)](#)