



Youth Justice and Criminal Evidence Act 1999

1999 CHAPTER 23

PART II

GIVING OF EVIDENCE OR INFORMATION FOR PURPOSES OF CRIMINAL PROCEEDINGS

CHAPTER III

PROTECTION OF COMPLAINANTS IN PROCEEDINGS FOR SEXUAL OFFENCES

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

- (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 accused 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 an accused, 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; or
 - (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

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- same time as the event which is the subject matter of the charge against the accused; 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—
- (i) to any sexual behaviour of the complainant which (according to evidence adduced or to be adduced by or on behalf of the accused) took place as part of the event which is the subject matter of the charge against the accused, or
- (ii) to 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 shall 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 accused.
- (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 (and accordingly nothing in those subsections is capable of applying in relation to the evidence or question to the extent that it does not so relate).
- (7) Where 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 shall cease to apply in relation to the trial if the prosecutor decides not to proceed with the case against that person or those persons in respect of that charge; but
- (b) it shall not cease to do so in the event of 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.

Modifications etc. (not altering text)

- C1** S. 41 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, 7, 8

Commencement Information

- II** S. 41 wholly in force at 4.12.2000; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 41 in force at 4.12.2000 in so far as not already in force by [S.I. 2000/3075](#), art. 2(a)

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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\(1\)](#)