

YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999

New reporting restrictions imposed on the media

The Youth Justice and Criminal Evidence Act ("the Act"), which received royal assent on 27 July 1999, introduces significant new restrictions on the media when reporting youth crime. The Act will affect all news reporting organisations and journalists need to be fully aware of the contents of the Act if a breach of the criminal law is to be avoided.

The Act - An Overview:

The Act is in two principal parts. Part I provides for further reform to the youth justice system in England and Wales by creating a new system of referral to Youth Offender Panels. Part II of the Act is divided into the following six main Chapters:

- Chapter 1 contains a range of special measures designed to help young, disabled, vulnerable or intimidated witnesses to give evidence in criminal proceedings. These include measures to reduce the stress of giving evidence at trial such as informal dress, screens, live link CCTV and the use of pre-recorded interviews. In particular, a court may eject all but one member of the press (s.25).
 - Restrictions on the freedom of defendants to cross-examine their alleged victims (Chapter 2).
 - Further restrictions on what evidence about an alleged victim's sexual behaviour can be considered relevant in a trial for a sexual offence (Chapter 3).
 - Further restrictions on publishing information that might reveal the identity of a witness (Chapter 4).
 - A change to the definition of who is competent to give evidence (Chapter 5).
 - Additional restrictions on the use of certain types of evidence (Chapter 6).
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The Reporting Restrictions

Of particular concern to a publisher or broadcaster is Chapter 4 and Schedule 2 of the Act, which contain the reporting restrictions. These provisions can be summarised as follows:

- After a criminal investigation has begun, the Act bans the identification of any person under 18 involved in an incident, either as accused, witness or victim. However, the provisions concerning witnesses and victims will be held "in reserve" until implemented by Order (s.44) (see below). The restriction covers reporting anywhere in the UK, but does not apply to proceedings which take place in Scotland.
- These restrictions can be varied by a court "if it is satisfied that it is necessary in the interests of justice to do so" (s.44(7)).
- A limited public interest defence is available if these restrictions are broken in relation to a witness or victim but not the accused (s.50(3)).
- Courts are given wider powers to restrict reporting of criminal proceedings involving persons under 18. (s.45).
- The Court has discretion to restrict reports about certain adult witnesses in criminal proceedings (s.46).
- The Court may impose restrictions on reporting any direction made pursuant to Chapters 1 and 2 (s.47) (see above).
- The two tier anonymity for alleged rape/sex offence victims has been significantly varied. At present there is an absolute ban on publishing any material which would be likely to identify a victim after an arrest but there is no such ban in the period between the complaint and the arrest. During this period the media is only prohibited from publishing the name, address or

a picture of the victim if it is likely to identify that person as a victim of a sexual offence. This distinction was helpful as it allowed the police to give some detail of rapes in order to appeal to the public for assistance with their inquiries. Under the new Act, this restriction has been tightened so that there is now a ban on reporting any matter (not just name, address etc) relating to a victim if it is likely to identify that person as a victim of a sexual offence. Details can only be published with the consent of the victim (sch 2, paras 6, 7).

- The current bans on the reporting of sexual offences tried in England and Wales have been extended to cover offences committed in the whole of the UK (sch 2, paras 4, 5).
- The Act extends the number of sexual offences in relation to which the identification of the alleged victim is banned (sch 2, para 8).

Section 44 - Restrictions on reporting alleged offences involving persons under 18

Section 44(2) provides that no information relating to any person involved in an offence shall 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 that offence. Section 44 broadly reflects the restrictions imposed by section 39 of the Children and Young Persons Act 1933 ("CYPA") on the reporting of information likely to identify young people involved in court proceedings. However, crucially, the restrictions are extended because the section will apply as soon as a criminal investigation has begun (s.44(1)).

Young persons covered by the restrictions are those who are alleged to have committed, been the victim of, or witnessed the commission of the offence that is under investigation (s.44(4)).

The Government was lobbied heavily by the media (with assistance from Goodman Derrick) and the Opposition regarding the ambit of these restrictions and in particular the ban on the identification of victims and witnesses. The original proposals would have made intelligible reports of incidents such as the Dunblane massacre or the murder of headmaster Philip Lawrence almost impossible. At the standing committee stage, for example, an amendment was suggested (but later withdrawn) that the ban should not be automatic, but should only apply if a successful application was made to the court.

This lobbying resulted in amendments so that reporting restrictions applied from the commencement of a criminal investigation rather than from the time of an allegation that a criminal offence had been committed. In addition, the provisions of section 44 will only apply to victims and witnesses once the Government passes an Order giving effect to it. A draft of the Order will have to be laid before and approved by a resolution of Parliament (s.64(3)). Home Office Minister Paul Boateng said that the concession was made in the light of the fact that the media industry was considering ways of strengthening its voluntary Codes of Practice to offer children more protection from unwarranted invasion of privacy.

The information of which publication is prohibited by section 44 includes in particular the name, address, identity of any school or other educational establishment attended by him, the identity of any place of work and any still or moving picture of him (s.44(6)).

The restrictions last until the individual reaches the age of 18 or a court order dispenses with the restrictions (s.44(7)) or the offence becomes the subject of criminal proceedings. Once the offence is the subject of criminal proceedings, the restrictions under section 45 (see below), or under section 49 of CYPA should then apply. Section 49(8) of CYPA is amended by paragraph 3(6) of Schedule 2 of the Act, so that a court may dispense with the reporting restrictions following the conviction of a child or young person. Applications can be made to lift these restrictions and a court may do so if satisfied it is in the interests of justice to do so.

Section 45 - Power to restrict reporting of criminal proceedings involving persons under 18

Section 45 gives the courts a discretionary power to impose prohibitions on reporting information

leading to the identification of any person, under the age of 18, concerned in the proceedings in an adult court, whether in England and Wales or Northern Ireland. A person is "concerned in the proceedings" if he is alleged to have committed, been the victim or witnessed the commission of the offence under investigation. The section does not apply to proceedings in youth courts where the automatic restrictions imposed by section 49 of CYPA will continue to apply (s.45(2)).

Any restrictions will apply until the person reaches 18 unless the court subsequently decides to lift or relax them.

Section 45 replaces 39 of CYPA in criminal cases. Section 39 will, however, continue to apply in civil cases.

Section 46 - Power to restrict reports about certain adult witnesses

By virtue of section 46, the courts will also be able to order reporting restrictions to prevent adult witnesses from being identified by the media if they are satisfied that the witness would otherwise be in such fear or distress that it would be likely to affect the quality of their evidence or their co-operation with the case. Under section 50(7), witnesses protected by such an order can waive (in writing) the restriction.

Section 47 - Restrictions on reporting directions under Chapter 1 or 2

Section 47 provides that if any direction has been given under Chapter 1 or 2 (see above), then that fact should not be reported unless specifically permitted by the court or until the end of the proceedings (s.47(6)).

Offences and penalty

Section 49 of the Act sets out the applicable offences and penalties for contravening any of the restrictions identified above. The maximum penalty on conviction is a fine of up to £5,000.

Defences

Section 50 sets out the range of defences that can be relied on if a publisher or broadcaster is charged with an offence under section 49.

Section 50(1) provides that it is a defence to any offences if the person charged did not know or suspect (or have reason to suspect) that the publication included material protected by a reporting restriction.

It will also be a defence to a breach of section 44(2) above to prove that the person charged was not aware, did not suspect or had no reason to suspect, that a criminal investigation had begun when the information was published (s. 50(2)).

Another defence exists if the breach of section 44(2) involved reporting information about a suspected victim or witness (i.e. not the accused) of any offence other than a sexual offence. To rely on the defence, it will be necessary to satisfy the court that the public interest demanded publication of the information and, because of that, the effect of the reporting restriction was a substantial and unreasonable restriction on reporting matters connected with the offence (eg the murder of headmaster Philip Lawrence) (s.50(3)).

Section 50(5) provides that it will be a defence to a breach of section 44(2) for a person to show that written consent to the publication of the material in question was obtained (but see below). If the person protected by the restriction is aged 16 or 17, he can give consent himself. If he is under 16, someone with appropriate responsibility for his welfare will be able to give consent on his behalf only after having been reminded in writing to consider the welfare of the child. Once given, the consent can be revoked before publication by anyone else with appropriate responsibility for the child or by the child himself. Such waivers cannot be given by victims of or witnesses to sexual offences if they are under the age of 16 nor by appropriate adults who are themselves accused of

the alleged offence.

More importantly, such a waiver cannot be given by the accused in any case. For example, consider the case of a 16 year old road protester who emerges from a tunnel after being arrested by the police. She is never charged and she and her parents consent to the use of photographs or pictures taken of her being frog-marched off by the police. Any publication of them would be an offence under section 44.

Commencement

Although the Act has received Royal Assent the main provisions do not have effect until they are brought into force by statutory instrument. The Home Office has indicated that this will not be until approximately April 2000.

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further information:

If you would like more information about any of Goodman Derrick's Media Law services please telephone and ask to speak to a member of the Media Group.

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