STATUTORY INSTRUMENTS

2006 No. 2888

DEFENCE

The Youth Justice and Criminal Evidence Act 1999 (Application to Standing Civilian Courts) Order 2006

Made - - - -	*30th October 2006*
Laid before Parliament	*6th November 2006*
Coming into force - -	*6th December 2006*

The Secretary of State, in exercise of the powers conferred upon him by section 61(1) and (2) of the Youth Justice and Criminal Evidence Act 1999(**a**), makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Youth Justice and Criminal Evidence Act 1999 (Application to Standing Civilian Courts) Order 2006 and shall come into force on 6th December 2006.

(2) In this Order—

"the Act" means the Youth Justice and Criminal Evidence Act 1999;

"continuing proceedings" means proceedings instituted before the date on which this Order comes into force;

"existing special measures power" means any existing power of the magistrate to make an order or give leave for the taking of measures in relation to a witness which are similar to those which could be provided for by a special measures direction;

"magistrate" means a person appointed under section 6(4) of the Armed Forces Act 1976(**b**) to sit as magistrate in trials before a Standing Civilian Court;

"special measures direction" means a direction under section 19 of the Act.

(3) For the purposes of this Order, proceedings before a Standing Civilian Court are to be taken to be instituted when the prosecuting authority referred to in article 6(1) of the Standing Civilian Courts Order 1997(**c**) prefers a charge under that article.

Application of the Act

2.—(1) The provisions of the Act which are specified in column 1 of Schedule 1 to this Order shall apply to proceedings before a Standing Civilian Court, subject to the modifications specified in column 2 of that Schedule.

(**a**) 1999 c. 23.
(**b**) 1976 c. 52.
(**c**) S.I. 1997/172.

(2) The provisions of the Act which are specified in column 1 of Schedule 2 to this Order (in so far as they are in force) shall have effect for the purpose of proceedings before a Standing Civilian Court subject to the modifications specified in column 2 of that Schedule.

Transitional provisions

3.—(1) A special measures direction may be given in relation to a witness in continuing proceedings unless the magistrate has before the date this Order comes into force—

(a) given leave in relation to the witness in connection with those proceedings under section 32 (evidence through television links) or section 32A (video recordings of testimony of child witnesses) of the Criminal Justice Act 1988(**a**); or

(b) exercised any existing special measures power in relation to the witness in connection with those proceedings.

(2) Nothing in—

(a) Chapter 2,

(b) Chapter 3, and

(c) Chapter 5,

of Part 2 of the Act applies in relation to continuing proceedings.

Derek Twigg
Parliamentary Under Secretary of State
Ministry of Defence

30th October 2006

(**a**) 1988 c. 33. Sections 32(1) to (3), 32A and 34A applied to proceedings before service courts by virtue of the Criminal Justice Act 1988 (Application to Service Courts) (Evidence) Order 1996 (S.I. 1996/2592) subject to the modifications specified in that Order. That Order has now been revoked by the Criminal Justice Act 1988 (Application to Service Courts) (Evidence) Order 2006 (S.I. 2006/2890) with a saving for section 32(1)(a) and (3) which continues to have effect in relation to proceedings before service courts subject to the modifications specified in that Order.

SCHEDULE 1

Article 2(1)

Application and Modification of the Act

Column 1	*Column 2*
Provisions applied	*Modifications*
In section 16—	
subsection (1)	For the words “criminal proceedings” there shall be substituted the words “proceedings before a Standing Civilian Court”. In paragraph (b), for the word “court” there shall be substituted the word “magistrate”.
subsection (2)	
subsections (3) and (4)	For the word “court” wherever it appears there shall be substituted the word “magistrate”.
subsection (5)	
In section 17—	
subsection (1)	For the words “criminal proceedings” there shall be substituted the words “proceedings before a Standing Civilian Court”. For the word “court” there shall be substituted the word “magistrate”.
subsections (2)–(4)	For the word “court” wherever it appears there shall be substituted the word “magistrate”.
In section 18—	
subsection (1)	The words “but this subsection has effect subject to subsection (2)” shall be omitted.
In section 19—	
subsection (1)	For the words “criminal proceedings” there shall be substituted the words “proceedings before a Standing Civilian Court”. In paragraph (a), for the word “court” there shall be substituted the word “magistrate”. In paragraph (b), for the words “court of its” there shall be substituted the words “magistrate of his”.
subsection (2)	For the words “court determines that the witness is eligible for assistance by virtue of section 16 or 17, the court” there shall be substituted the words “magistrate determines that the witness is eligible for assistance by virtue of section 16 or 17, he”. In paragraphs (a) and (b), for the word “its” wherever it appears there shall be substituted the word “his”.
subsection (3)	For the word “court” there shall be substituted the word “magistrate”.
subsections (4) and (5)	
subsection (6)	For the word “court” there shall be substituted the word “magistrate”. For the words “its inherent jurisdiction or otherwise” there shall be substituted the words “any powers as may be provided for in legislation”.
In section 20—	
subsection (1)	
subsection (2)	For the words “The court may discharge or vary (or further vary) a

	special measures direction if it appears to the court" there shall be substituted the words "The magistrate may discharge or vary (or further vary) a special measures direction if it appears to him". In paragraph (b), for the word "its" there shall be substituted the word "his".
subsection (3)	
subsection (4)	For the word "court" there shall be substituted the word "magistrate".
subsection (5)	For the words "The court must state in open court its" there shall be substituted the words "The magistrate must state in open court his". For the words "and, if it is a magistrates' court, must cause them to be entered in the register of its proceedings" there shall be substituted the words "and the magistrate must cause them to be entered in the note of the proceedings".
subsection (6)	For the words "Criminal Procedure Rules" there shall be substituted the words "Rules of court". In paragraph (a), for the word "court" there shall be substituted the word "magistrate".
In section 21—	
subsection (1)	In paragraph (a), for the words "criminal proceedings" there shall be substituted the words "proceedings before a Standing Civilian Court". In paragraph (b)— After the words "relate is" there shall be inserted the words "an offence under either section 70 of the Army Act 1955 or of the Air Force Act 1955, or section 42 of the Naval Discipline Act 1957, of which the corresponding civil offence (within the meaning of those Acts) is"(**a**).
subsection (2)	For the word "court" wherever it appears there shall be substituted the word "magistrate". For the words "criminal proceedings" there shall be substituted the words "proceedings before a Standing Civilian Court".
subsections (3) and (4)	For the word "court" wherever it appears there shall be substituted the word "magistrate".
subsection (5)	
subsections (6) and (7)	For the word "court" wherever it appears there shall be substituted the word "magistrate".
subsections (8) and (9)	
In section 22—	
subsection (1)	In paragraph (a), for the words "criminal proceedings" there shall be substituted the words "proceedings before a Standing Civilian Court". In paragraph (b)— After the words "relate is" there shall be inserted the words "an offence under either section 70 of the Army Act 1955 or of the Air Force Act 1955, or section 42 of the Naval Discipline Act 1957, of which the corresponding civil offence (within the meaning of those Acts) is".
subsection (2)	
In section 23—	
subsection (1)	

(**a**) Army Act 1955 (c. 18); Air Force Act 1955 (c. 19); Naval Discipline Act 1957 (c. 53).

subsection (2)	For paragraph (a) there shall be substituted the following paragraph: "(a) the magistrate and other members of the court (if any);".
subsection (3)	
In section 24—	
subsection (1)	
subsection (2)	For the word "court" there shall be substituted the word "magistrate".
subsection (3)	For the words "court may give permission for the purposes of subsection (2) if it appears to the court" there shall be substituted the words "magistrate may give permission for the purposes of subsection (2) if it appears to him". In paragraph (b), for the word "its" there shall be substituted the word "his".
subsection (4)	
subsection (8)	
In section 25—	
subsections (1) and (2)	
subsections (3) and (4)	For the word "court" wherever it appears there shall be substituted the word "magistrate".
subsection (5)	
Section 26	
In section 27—	
subsection (1)	
subsections (2) and (3)	For the word "court" wherever it appears there shall be substituted the word "magistrate".
subsection (4)	For the words "court may nevertheless" there shall be substituted the words "magistrate may nevertheless". In paragraph (a), for the words "the court" there shall be substituted the word "him". In paragraph (b), for the words "Criminal Procedure Rules" there shall be substituted the words "rules of court". In paragraph (b), for the words "the court" there shall be substituted the words "the magistrate".
subsection (5)	In paragraph (b), for the word "court" wherever it appears there shall be substituted the word "magistrate".
subsection (6)	
subsection (7)	For the words "The court" there shall be substituted the words "The magistrate". For the words "appears to the court" there shall be substituted the words "appears to him". In paragraph (b), for the word "its" there shall be substituted the word "his".
subsection (8)	
subsection (9)	For the word "court" wherever it appears there shall be substituted the word "magistrate".
subsection (11)	
In section 29—	
subsection (1)	For the word "court" there shall be substituted the word "magistrate".
subsection (2)	
subsection (3)	For the words "Criminal Procedure Rules" there shall be substituted the words "rules of court". In paragraph (a), for the words "judge or justices (or both)" there

	shall be substituted the word "magistrate". In paragraph (b), for the words "the jury (if there is one)" there shall be substituted the words "the other members of the court (if any)".
subsection (4)	
subsection (5)	For the words "Criminal Procedure Rules" there shall be substituted the words "rules of court".
subsection (6)	In paragraph (b), for the word "court's" there shall be substituted the word "magistrate's".
subsection (7)	
Section 30	For the words "the court" there shall be substituted the words "the magistrate".
In section 31—	
subsection (1)	For the words "criminal proceedings" there shall be substituted the words "proceedings before a Standing Civilian Court".
subsections (2)–(4)	
subsection (5)	For the words "criminal proceedings" there shall be substituted the words "proceedings before a Standing Civilian Court".
subsections (6)–(8)	
Section 32	The words "on a trial on indictment with a jury" shall be omitted. For the word "judge" wherever it appears there shall be substituted the word "magistrate". For the word "jury" there shall be substituted the words "other members of the court (if any)".
In section 33—	
subsections (1)–(3)	
subsection (4)	For the word "court" wherever it appears there shall be substituted the word "magistrate".
Section 34	For the words "criminal proceedings" there shall be substituted the words "proceedings before a Standing Civilian Court".
In section 35—	
subsection (1)	For the words "criminal proceedings" there shall be substituted the words "proceedings before a Standing Civilian Court".
subsection (2)	
subsection (3)	For the words "The offences to which this section applies are—" there shall be substituted the words "This section applies to any offence under either section 70 of the Army Act 1955 or of the Air Force Act 1955, or section 42 of the Naval Discipline Act 1957, of which the corresponding civil offence (within the meaning of those Acts) is—". In paragraph (a), for the word "any" there shall be substituted the word "an".
subsections (4) and (5)	
In section 36—	
subsection (1)	For the words "criminal proceedings" there shall be substituted the words "proceedings before a Standing Civilian Court". In paragraph (a), for the word "court" there shall be substituted the word "magistrate". In paragraph (b), for the words "court of its" there shall be substituted the words "magistrate of his".
subsections (2) and (3)	For the word "court" wherever it appears there shall be substituted the word "magistrate".
subsection (4)	
In section 37—	
subsection (1)	

subsection (2)	For the words “court may discharge a direction if it appears to the court” there shall be substituted the words “magistrate may discharge a direction if it appears to him”. In paragraph (b), for the word “its” there shall be substituted the word “his”.
subsection (3)	
subsection (4)	For the words “The court must state in open court its” there shall be substituted the words “The magistrate must state in open court his”. For the words “and, if it is a magistrates’ court, must cause them to be entered in the register of its proceedings” there shall be substituted the words “and the magistrate must cause them to be entered in the note of the proceedings”.
subsection (5)	For the words “Criminal Procedure Rules” there shall be substituted the words “rules of court”. In paragraph (a), for the word “court” there shall be substituted the word “magistrate”.
In section 38—	
subsection (1)	
subsection (2)	For the words “court that this section applies, it” there shall be substituted the words “magistrate that this section applies, he”.
subsection (3)	In paragraph (b), for the words “appears to the court” there shall be substituted the words “appears to the magistrate”. For the words “court must consider” there shall be substituted the words “magistrate must consider”.
subsection (4)	For the word “court” wherever it appears there shall be substituted the word “magistrate”. The word “qualified” shall be omitted.
subsection (5)	
subsections (6) and (7)	For the words “Criminal Procedure Rules” wherever they appear there shall be substituted the words “Rules of court”.
subsection (8)	In paragraph (a), the word “and” shall be omitted. Omit paragraph (b).
In section 39—	
subsection (1)	The words “on a trial on indictment with a jury” shall be omitted. For the word “judge” wherever it appears there shall be substituted the word “magistrate”. For the word “jury” there shall be substituted the words “other members of the court (if any)”.
subsection (2)	
In section 41—	
subsection (1)	For the word “court” there shall be substituted the word “magistrate”.
subsection (2)	For the words “court may give” there shall be substituted the words “magistrate may give”. For the word “it” there shall be substituted the word “he”. In paragraph (b), the words “the jury or (as the case may be)” shall be omitted.
subsection (3)	
subsections (4) and (5)	For the word “court” wherever it appears there shall be substituted the word “magistrate”.
subsections (6)–(8)	
In section 42—	
subsection (1)	

subsection (3)	Paragraphs (a), (b), (c) and (e) shall be omitted. In paragraph (d) after the words "dealt with," the word "and" shall be omitted.
In section 43—	
subsection (1)	
subsection (2)	For the words "court must state in open court (but in the absence of the jury, if there is one)" there shall be substituted the words "magistrate must state in open court (but in the absence of the other members of the court (if any))". In paragraph (a), for the word "its" there shall be substituted the word "his". In paragraph (b), for the word "it" there shall be substituted the word "he". For the words "and, if it is a magistrates' court, must cause them to be entered in the register of its proceedings" there shall be substituted the words "and the magistrate must cause them to be entered in the note of the proceedings".
subsection (3)	For the words "Criminal Procedure Rules" there shall be substituted the words "Rules of court". In paragraph (b), for the words "court to request a party to the proceedings to provide the court with information which it considers would assist it" there shall be substituted the words "magistrate to request a party to the proceedings to provide such information as he considers would assist him".
In section 53—	
subsection (1)	For the words "criminal proceedings" wherever they appear there shall be substituted the words "proceedings before a Standing Civilian Court".
subsection (2)	
subsection (3)	For the words "criminal proceedings" there shall be substituted the words "proceedings before a Standing Civilian Court". For the word "court" there shall be substituted the word "magistrate".
subsections (4) and (5)	For the words "criminal proceedings" wherever they appear there shall be substituted the words "proceedings before a Standing Civilian Court".
In section 54—	
subsection (1)	For the words "criminal proceedings" there shall be substituted the words "proceedings before a Standing Civilian Court". In paragraph (b), for the words "court of its" there shall be substituted the words "magistrate of his". For the words "court in accordance" there shall be substituted the words "magistrate in accordance".
subsections (2) and (3)	For the word "court" wherever it appears there shall be substituted the word "magistrate".
subsection (4)	For the words "jury (if there is one)" there shall be substituted the words "other members of the court (if any)".
subsection (5)	
subsection (6)	For the word "court" wherever it appears there shall be substituted the word "magistrate".
In section 55—	
subsection (1)	For the words "criminal proceedings" there shall be substituted the words "proceedings before a Standing Civilian Court". In paragraph (b), for the words "court of its" there shall be substituted the words "magistrate of his".

	For the words “court in accordance” there shall be substituted the words “magistrate in accordance”.
subsections (2) and (3)	
subsection (4)	For the word “court” there shall be substituted the word “magistrate”.
subsection (5)	For the words “jury (if there is one)” there shall be substituted the words “other members of the court (if any)”.
subsection (6)	
subsection (7)	For the word “court” wherever it appears there shall be substituted the word “magistrate”.
subsection (8)	
In section 56—	
subsections (1)–(3)	For the words “criminal proceedings” wherever they appear there shall be substituted the words “proceedings before a Standing Civilian Court”.
subsection (4)	For the words “A court in criminal proceedings” there shall be substituted the words “A Standing Civilian Court”.
subsection (5)	For the words “criminal proceedings” there shall be substituted the words “proceedings before a Standing Civilian Court”. For the words “any of sections 2(1), 13(1) and 16(1) of the Criminal Appeal Act 1968” there shall be substituted the words “section 12(1) of the Courts-Martial (Appeals) Act 1968”(**a**). For the words “Court of Appeal” there shall be substituted the words “Courts-Martial Appeal Court”.
In section 57—	
subsection (1)	For the words “criminal proceedings” there shall be substituted the words “proceedings before a Standing Civilian Court”.
subsections (2) and (3)	
In section 62—	
subsection (1)	After the word “any” there shall be inserted the words “offence under either section 70 of the Army Act 1955 or of the Air Force Act 1955, or section 42 of the Naval Discipline Act 1957, of which the corresponding civil offence (within the meaning of those Acts) is an”.
subsection (2)	
In section 63—	
subsection (1)	For the words “criminal proceedings” wherever they appear there shall be substituted the words “proceedings before a Standing Civilian Court”. For the definition of “court” there shall be substituted the following definition— ““court” means a Standing Civilian Court;”. For the definition of “legal representative” shall be substituted the following definition— ““legal representative” means any person who— (i) is an authorised advocate or authorised litigator (as defined by section 119(1) of the Courts and Legal Services Act 1990); (ii) is an advocate or solicitor in Scotland; (iii) is a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland; or (iv) has in any Commonwealth country rights and duties similar to those of a barrister or solicitor in England and Wales, and is

(**a**) 1968 c. 20.

	subject to punishment or disability for breach of professional rules;".
subsection (2)	For the words "court to exclude evidence at its" there shall be substituted the words "magistrate to exclude evidence at his".
In section 65—	
subsection (1)	For the words "Criminal Procedure Rules" there shall be substituted the words "Rules of court".
subsection (2)	For subsection (2) there shall be inserted the following subsection— "(2) In this Act "rules of court" means rules made under paragraph 12 of Schedule 3 of the Armed Forces Act 1976 or as otherwise provided for in this Act."(**a**).
subsection (3)	

SCHEDULE 2

Article 2(2)

Modifications to Chapter 4 of Part 2 of the Act

Column 1	*Column 2*
Provision	*Modifications*
In section 45—	
subsections (3)–(5)	For the words "The court" wherever they appear there shall be substituted the words "The magistrate".
subsection (6)	For the words "the court" there shall be substituted the words "the magistrate".
subsections (9) and (10)	For the words "the court" wherever they appear there shall be substituted the words "the magistrate".
In section 46—	
subsections (2)–(5)	For the word "court" wherever it appears there shall be substituted the word "magistrate".
subsection (8)	For the word "court" there shall be substituted the word "magistrate".
subsections (9)–(11)	For the words "court or an appellate court" wherever they appear there shall be substituted the words "magistrate or an appellate court".
In section 47—	
subsection (2)	In paragraph (b), for the words "court acts of its" there shall be substituted the words "magistrate acts of his".
subsections (3)–(5)	For the word "court" wherever it appears there shall be substituted the word "magistrate".
In section 52—	
subsection (1)	For the word "court" wherever it appears there shall be substituted the word "magistrate".

(**a**) 1976 c. 52; Schedule 3 was amended by section 5 of, and Schedule 1 to, the Armed Forces Act 1996 (c. 46).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies, with modifications, Chapters 1 to 3 and 5 of Part 2 of the Youth Justice and Criminal Evidence Act 1999 (c. 23) ("the Act") to Standing Civilian Courts. These Chapters contain a range of measures designed to help young, disabled, vulnerable or intimidated witnesses give evidence in criminal proceedings. The Order also contains modifications to certain provisions of Chapter 4 dealing with reporting restrictions.

Article 3 contains transitional provisions in respect of proceedings commenced prior to the date this Order comes into force.

Schedule 1 to the Order applies to Standing Civilian Courts, with modifications, the provisions of Chapter 1. This Chapter sets out which witnesses are eligible for assistance and the special measures available to assist them (including the use of screens, live television links and video-recorded evidence). The modifications provide that the magistrate shall have the power to make special measures directions.

Schedule 1 also applies, with modifications, the provisions of Chapter 2, which provide protection for vulnerable witnesses from cross-examination by an accused in person, and the provisions of Chapter 3, which provide further protection to complainants in proceedings for sexual offences by restricting evidence or questioning about the complainant's sexual history.

Schedule 1 also applies, with modifications, the provisions of Chapter 5, which deal with competence of witnesses and capacity to be sworn.

Schedule 2 of the Order contains modifications to certain provisions of Chapter 4 made under section 61(2) of the Act. Chapter 4 already has effect for the purposes of proceedings before a service court (in so far as it has been bought into force) and contains provisions allowing a court to impose reporting restrictions in certain proceedings involving vulnerable persons. The modifications in Schedule 2 provide that, in the case of a Standing Civilian Court, it is the magistrate who has the power to give, or revoke, a reporting direction. As at the date of this Order, sections 44 and 45 in Chapter 4 have not yet been commenced but Schedule 2 contains modifications to section 45 which will take effect automatically in relation to proceedings before Standing Civilian Courts when section 45 is commenced under section 68(3) of the Act. This Order does not operate to commence sections 44 or 45.

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