

# Criminal Evidence (Witness Anonymity) Act 2008

## 2008 CHAPTER 15

An Act to make provision for the making of orders for securing the anonymity of witnesses in criminal proceedings.

[21st July 2008]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

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### Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "This Act puts on a statutory footing a power for the courts to grant witness anonymity orders in criminal proceedings where this is consistent with the right of a defendant to a fair trial."

### Pepper v Hart Note (see General Note: Pepper v Hart):

The Secretary of State for Justice introduced the Bill for this Act to the House of Commons (HC Deb 8<sup>th</sup> July 2008 c. 1304) by reference to a statement made to the House on 26<sup>th</sup> June following a House of Lords' judgment in the case of *R v Davis* [2008] UKHL 36. In that statement (HC Deb 26<sup>th</sup> June 2008 c. 514) the Secretary of State said—

"As the House will know, the Law Lords decided that there was not sufficient authority in common law to provide for the current arrangements for the admission of anonymous evidence, and said that this was a matter for Parliament to deal with by statute. The Government will therefore present a Bill to rectify the situation as a matter of urgency. ...

As long as there has been crime, criminals have sought to intimidate witnesses in order to avoid punishment. Criminal justice systems across the world have sought to deal with this problem. Criminals do not operate by the rules, but the rule of law requires that justice should not only be done, but be seen to be done. The right of a defendant to confront his or her accusers in open court has been a key feature of all systems of justice worthy of that name. That right should be modified only where it is fully justified.

In recent years, witness intimidation has become an all too common feature in crimes of a serious nature, especially those involving guns, gangs or drugs. Such is the fear that can be engendered by such criminals that entire communities in an area may be reluctant to come forward to give any evidence about what they know. ...

To deal with this situation, our courts had developed careful and proportionate measures by which the trial judge, where he or she believed it necessary, could order that evidence be given in such a way that the identification of certain key prosecution witnesses was disguised. In some cases, the key witnesses concerned may themselves have been involved in crime; others will be innocent bystanders, and still others may be, and are, undercover police officers or agents. In the Davis case, key witnesses were screened from sight of the defence, were given pseudonyms and had their voices electronically distorted.

In the Davis appeal, the Court of Appeal reviewed all of the circumstances, the common law authorities and the Strasbourg jurisdiction, and held that measures of this kind were both necessary and just to defendants in this case. Their appeals were therefore dismissed. In the House of Lords, their lordships took the opposite view. ...

Lord Rodger said: "Parliament is the proper body both to decide whether such a change is now required, and, if so, to devise an appropriate system which still ensures a fair trial". ...

The essence of the scheme that will be published in the Bill is that the trial judge will have to be satisfied that the need for anonymity is established, that a fair trial will be possible and that it is in the interests of justice to make such an order for anonymity. There will also be other factors that the judge will have to consider in reaching this decision."

## 1 New rules relating to anonymity of witnesses

- (1) This Act 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 Act affects the common law rules as to the withholding of information on the grounds of public interest immunity.

### Section 1

#### Introduction:

This section introduces the concept of witness anonymity orders, which are applicable only in criminal proceedings. The relevant common law rules are abolished.

#### Pepper v Hart Note (see General Note: Pepper v Hart):

In Committee on the Bill for this Act in the House of Lords (on 15th July 2008) the Attorney-General (Baroness Scotland of Asthal) said as follows:

“It is important that we are clear about this matter, because courts throughout our country will need to understand precisely what we have done and how we have sought to answer the Judicial Committee so that they have a solid basis on which to go forward. Seeking to preserve the common law in the way suggested by the amendment would risk creating uncertainty for the courts and parties to criminal proceedings, which would not be desirable—I do not think that any noble Lords who have spoken in support of the amendment would want that. However, I am grateful to them, because we have been able to put on record our clear understanding of what is and what is not being dealt with. We are dealing only with the common law ability to grant anonymity orders, which the Judicial Committee said we cannot use, and we are substituting a statutory framework by way of the provision. ... I reassure the Committee that the court in Davis made it clear that this part of the process is not an ancient common law rule. At best, it goes back to about 1990, as, I hope, if one looks at the judgment, the review in the case of Davis on the development of the common law made clear. The general right under common law of a defendant to know the identity of a witness is not being abolished; it is being maintained.”

#### Subsection (1):

Witness anonymity orders – see section 2(1).

Witnesses – see section 12(1).

Criminal proceedings – see section 12(1).

**Subsection (2):**

See General Note: Common law rules. The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "The common law rules thus abolished, and replaced by the Act, are those which allow the court to make an order to secure that the identity of a witness is withheld from the defendant or, in the case of defence applications, another defendant. Any common law rules which provide for other kinds of anonymity, for example any that might apply to the court's power to hold proceedings in camera, are not affected by the Act."

A court – see section 12(1).

Defendant – see section 12(1).

**Subsection (3):**

See General Note: Public Interest Immunity. The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "PII applications will often be made by the prosecution in cases involving witness anonymity."

## 2 Witness anonymity orders

- (1) In this Act a “ witness anonymity order” is an order made by a court that requires such specified measures to be taken in relation to a witness in criminal proceedings as 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.

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### Section 2

#### Introduction:

This section defines 'witness anonymity order' and lists measures court may use to secure witnesses' anonymity.

#### Note:

Enforcement of witness anonymity order. The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "Breach of the order by the unauthorised disclosure of a witness's identity

will fall to be dealt with as contempt of court (but see section 8(4) and (5) in respect of service courts).”

**Subsection (1):**

A court – see section 12(1).

Witness – see section 12(1).

Criminal proceedings – see section 12(1).

“Specified” – see subs. (5)

**Subsection (2):**

This list is not exclusive, and is not to restrict the breadth of subsection (1) (see subs. (3)).

**Subsection (4):**

**Pepper v Hart Note** (see General Note: Pepper v Hart):

In Committee on the Bill for this Act in the House of Lords (on 15th July 2008) the Parliamentary Under-Secretary of State, Ministry of Justice (Lord Hunt of Kings Heath) said as follows:

“I of course understand the noble Baroness’s concerns on the position of defence counsel. In answer, I refer to the Court of Appeal decision in the case of Davis, where it had the benefit of written submissions from the Bar Council. As a starting point, the Court of Appeal considered that, in certain circumstances, defence counsel may find himself or herself with a conflict of duty where witness anonymity orders are made. They are bound by the order not to disclose the identity of the witness to anybody, in particular to the defendant. On the other hand, they are bound by their professional duty to provide relevant information to their clients. The court took the view that defence counsel may see and hear an anonymous witness’s real appearance and voice but would be bound by the anonymity ruling and would, indeed, be in contempt of court if they disobeyed it. If the defendant instructs counsel that counsel should inform him of the appearance of the witness or if counsel believes that the professional relationship with the client may be damaged if he were unable to communicate information that his client wanted from him, then it is open to the court to order that defence counsel should be screened from the witness. The Court of Appeal said that, in such an event, counsel for the Crown should be in the same position as counsel for the defendant. The Appellate Committee of your Lordships’ House in Davis did not address that point. The decision not to make provision for this in the Bill is deliberate. In some cases, defence counsel may decide after taking instructions that they should also be screened from the witness, so that they will be in the same position as the defendant. In such a case, the court will order that prosecuting counsel will also be screened from the witness. It would be for defence counsel to decide on a case-by-case basis, after taking instructions, whether they will volunteer to be prevented from seeing the witness. The Bill does not alter this practice and allows for the flexibility required to continue. However, there is nothing to

prevent the court from allowing a barrister to see an anonymous witness in any case. It is for the court to decide on a case-by-case basis.”

### 3 Applications

- (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) Where an 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) is not required to 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 or her legal representatives.
  - (3) Where an 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) is not required to 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) Accordingly, where 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) “ 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) But subsection (6) does not prevent the court from hearing one or more parties in the absence of a defendant and his or her 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.
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### **Section 3**

#### **Introduction:**

This section allows prosecutors and defendants to apply for witness anonymity orders.

#### **Subsection (1):**

Witness anonymity order – see section 12(1).

Witness – see section 12(1).

Criminal proceedings – see section 12(1).

Prosecutor – see section 12(1).

“Defendant” – see section 12(1).

#### **Note:**

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "It is anticipated that defence applications will normally be made in multi-handed cases (that is, where there is more than one defendant) where one defendant does not wish a witness's identity to be known by the other defendant or defendants. But this subsection does not exclude the possibility of a defence application in a single-handed case."

#### **Subsection (4):**

“Relevant Material” – see subsection (5).

#### **Subsection (8):**

See General Note: Rules of Court.

## 4 Conditions for making order

- (1) This section applies where 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.
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### Section 4

#### Introduction:

This section sets out 3 conditions for a court to make an order.

#### Subsection (1):

Application – under section 3.

Witness anonymity order – see section 2(1).

Witness – see section 12(1).

Criminal proceedings – see section 12(1).

**Subsection (2):**

The court – see section 12(1).

If satisfied – see General Note: Levels of Certainty.

**Subsection (4):**

Fair trial – a right guaranteed by Article 6 of the European Convention on Human Rights (see General Note: European Convention on Human Rights).

**Subsection (6):**

**Pepper v Hart Note** (see General Note: Pepper v Hart):

In Committee on the Bill for this Act in the House of Lords (on 15th July 2008) the Parliamentary Under-Secretary of State, Ministry of Justice (Lord Hunt of Kings Heath) said as follows:

“As I have said, Clause 4(6) provides that, in reaching a decision, the judge must have regard to any reasonable fear on the part of the witness relating to his safety. This simply means that the court must take account of information from the witness relating to his fear that he would suffer death or injury if his identity were revealed. We have used the term “reasonable fear” to allow the court to disregard irrational fear expressed by the witness. It will of course be for the court to make a judgment and, if it is satisfied that the fear expressed by the witness is reasonable, that will be taken into account by the judge in deciding whether it is necessary to protect the witness or another person or to prevent serious damage to property. Clause 4(6) expressly relates to Clause 4(3)(a) and not to Clause 5 and condition C. The reason is that in Clause 4(6) we are talking about the witness’s fear of death or injury or of serious damage to property if his identity is revealed and not about his fear of giving evidence per se. Therefore, we think that the Bill’s current construct is satisfactory. It is also important to recognise that condition A has to be taken in conjunction with Clause 4(6) and the fact that the court has to have regard to any reasonable fear on the part of the witness.”

## 5 Relevant considerations

- (1) When deciding whether Conditions A to C in section 4 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) such other matters as 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.
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### Section 5

#### Introduction:

This section specifies factors that a court must consider in deciding whether the Conditions in section 4 are met.

#### Subsection (1):

Witness anonymity order – see section 2(1).

The court – see section 12(1).

#### Subsection (2):

A non-exhaustive list – see subs. (1)(b).

**Subsection (2)(a):**

Defendant – see section 12(1).

Criminal proceedings – see section 12(1).

Witness – see section 12(1).

## 6 Discharge or variation of order

(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 4 and 5 that applied to the making of the order.

(2) The court may do so–

(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 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.

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### Section 6

#### Introduction:

This section allows an order already made by the court to be discharged or varied.

#### Subsection (1):

The Court – see section 12(1).

Witness anonymity order – see section 2(1).

Sections 4 and 5 – the 3 conditions for making the order.

#### Subsection (2):

Relevant time – see subs.(3). In essence, the time when the order was made or last reconsidered.

## 7 Warning to jury

(1) Subsection (2) applies where, on a trial on indictment with a jury, 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.

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### Section 7

#### Introduction:

This section requires a judge in a Crown Court trial to warn the jury if a witness anonymity order has been made. The Government's Explanatory Notes (see General Note: Explanatory Notes) say that the purpose of the warning is to ensure that the fact that the order was made does not prejudice the defendant; they also note that the provision is based on section 32 of the Youth Justice and Criminal Evidence Act 1999 (jury warnings where special measures direction made to assist a vulnerable or intimidated witness).

#### Subsection (1):

Witness – see section 12(1).

Witness anonymity order – see section 2(1).

Defendant – see section 12(1).

## 8 Special provisions for service courts

- (1) Subsections (2) and (3) apply in relation to criminal proceedings before a service court consisting of a judge advocate and other members.
- (2) Any decision falling to be made by the court in such proceedings under sections 2 to 6 is to be made by the judge advocate alone.
- (3) If any evidence is given by a witness in such proceedings at a time when a witness anonymity order applies to the witness, the judge advocate must give the other members such warning as the judge advocate considers appropriate to ensure that the fact that the order was made in relation to the witness does not prejudice the defendant.
- (4) Each of the provisions mentioned in subsection (5) has effect with the modification set out in that subsection in a case where—
  - (a) a witness anonymity order is made by a service court to which that provision applies, and
  - (b) a person does anything in relation to the order which would, if the court had been a court of law having power to commit for contempt, have been contempt of that court.
- (5) In such a case—
  - (a) section 101(1) of the Army Act 1955 (3 & 4 Eliz. 2 c. 18) has effect with the omission of the words “ “ not subject to military law” ” ;
  - (b) section 101(1) of the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) has effect with the omission of the words “ “ not subject to air-force law” ” ; and
  - (c) section 65(1) of the Naval Discipline Act 1957 (c. 53) has effect with the omission of the words “ “ not subject to this Act” ” .

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### Section 8

#### Introduction:

This section applies Witness Anonymity Orders to criminal proceedings in armed services' courts.

#### Subsection (1):

Criminal proceedings – see section 12(1).

Service Court – see section 12(2).

Judge advocate - a judge who has been specified by the Judge Advocate General to preside over a hearing in the court martial (*q.v.*) or the summary appeal court (*q.v.*) or the service civilian court (*q.v.*): see section 362 of the Armed Forces Act 2006.

**Subsection (3):**

Witness – see section 12(1).

**Subsection (4):**

See General Note: Contempt of Court.

**Subsections (4) & (5):**

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "While the breach of an order within the civilian courts will be dealt with under common law powers relating to contempt of court this is not open to the existing service courts (again, with the exception of the Courts-Martial Appeal Court). Accordingly such breaches will be dealt with by a procedure under which the service court refers the matter to an appropriate court which does have powers to punish for contempt of court. *Subsections (4) and (5)* therefore adapt the procedures currently provided for contempt in the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act

## **9 Proceedings to which new rules apply**

- (1) Sections 2 to 8 apply to criminal proceedings in cases where—
    - (a) the trial or hearing begins on or after the day on which this Act is passed, or
    - (b) the trial or hearing has begun, but has not ended, before that day.
  - (2) Section 10 applies to certain proceedings falling within subsection (1)(b).
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### **Section 9**

#### **Introduction:**

This section deals with commencement of the new arrangements. It applies the new system to all trials starting after Royal Assent and to some that started before.

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "The aim underlying these sections is to prevent trials from being abandoned, or convictions quashed on appeal, solely on the ground that the trial court had no power at common law to make the anonymity order".

#### **Subsection (1):**

Criminal proceedings – see section 12(1).

## 10 Pre-commencement anonymity orders: existing proceedings

- (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 Act had been in force 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 2 to 5.
  - (4) Any 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 precommencement 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 or she has finished doing so).
  - (6) In such a case 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 Act had been in force 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—

“ commencement” means the day on which this Act is passed; “ pre-commencement anonymity order” means an order made before commencement that falls within section 1(2).
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## Section 10

### Introduction:

This section deals with trials begun before Royal Assent, where the court has made an anonymity order under the old common law rules which are abolished by this Act. The Government's Explanatory Notes (see General Note: Explanatory Notes) encapsulate the essence of the transitional arrangements as follows: "The judge will then decide whether the trial or hearing is to continue in the usual way. If he or she considers that the defendant has been prevented from receiving a fair trial, *subsection (7)* requires the judge to consider how to bring the proceedings to a conclusion. It is open to the judge to consider ordering a re-trial."

### Subsection (1):

Commencement – date of Royal Assent (subs. (8)): 21<sup>st</sup> July 2008.

Pre-commencement anonymity order – see subsection (8).

Criminal proceedings – see section 12(1).

Court – see section 12(1).

Witness – see section 12(1).

### Subsection (6):

Fair trial – a right guaranteed by Article 6 of the European Convention on Human Rights (see General Note: European Convention on Human Rights).

## 11 Pre-commencement anonymity orders: appeals

- (1) This section applies where–
- (a) an appeal court is considering an appeal against a conviction in criminal proceedings in a case where the trial ended before commencement, and
  - (b) the court from which the appeal lies (“ the trial court” ) made a precommencement anonymity order in relation to a witness at the trial.
- (2) The appeal 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–
    - (i) that the order was not one that the trial court could have made if this Act had been in force at the material time, and
    - (ii) that, as a result of the order, the defendant did not receive a fair trial.
- (3) In this section–
- “ appeal court” means–
- (a) the Court of Appeal;
  - (b) the Court of Appeal in Northern Ireland; or
  - (c) the Courts-Martial Appeal Court or the Court Martial Appeal Court;
- “ commencement” and “ pre-commencement anonymity order” have the meanings given by section 10(8).
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### Section 11

#### Introduction:

This section concerns appeals against conviction from trials that took place before Royal Assent. In essence, the rule is that the appeal need not be allowed just because the old rules were followed, provided that the same anonymity could have been granted under the new rules.

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "The purpose of Section 11 is to prevent an appeal court from quashing a conviction solely on the grounds that a witness anonymity order was made under the Common Law (and so the court, as a result of the finding in *Davis*, had no power at the time to make the order in the circumstances). Instead, the court is required to consider whether the order could have been made under the new law. The appeal court is required to quash the conviction if it considers that the defendant did not receive a fair trial".

**Subsection (1):**

Appeal court – see subs. (3).

Commencement – Royal Assent (see section 10, by virtue of subs. (3)).

Criminal proceedings – see section 12(1).

Court – see section 12(1).

Pre-commencement anonymity order – see section 10 (by virtue of subs. (3)).

**Subsection (3):**

See General Notes: Court of Appeal; Court of Appeal in Northern Ireland.

## 12 Interpretation

(1) In this Act—

“ court” means—

- (a) in relation to England and Wales, a magistrates' court, the Crown Court or the criminal division of the Court of Appeal;
- (b) in relation to Northern Ireland, a magistrates' court, the Crown Court, a county court exercising its criminal jurisdiction or the Court of Appeal in Northern Ireland; or
- (c) a service court;

“ criminal proceedings” means—

- (a) in relation to a court within paragraph (a) or (b) above, criminal proceedings consisting of a trial or other hearing at which evidence falls to be given;
- (b) in relation to a service court, proceedings in respect of a service offence consisting of a trial or other hearing at which evidence falls to be given;

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

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

“ service court” has the meaning given by subsection (2);

“ service offence” has the meaning given by subsection (3);

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

“ witness anonymity order” has the meaning given by section 2.

(2) In this Act “ service court” means—

- (a) a court-martial constituted under the Army Act 1955 (3 & 4 Eliz. 2 c. 18), the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or the Naval Discipline Act 1957 (c. 53) or the Court Martial established by the Armed Forces Act 2006 (c. 52);
- (b) the Summary Appeal Court established by any of those Acts;
- (c) a Standing Civilian Court established under the Armed Forces Act 1976 (c. 52) or the Service Civilian Court established by the Armed Forces Act 2006; or
- (d) the Courts-Martial Appeal Court or the Court Martial Appeal Court.

(3) In this Act “ service offence” means—

- (a) any offence against any provision of Part 2 of the Army Act 1955, Part 2 of the Air Force Act 1955 or Part 1 of the Naval Discipline Act 1957; or

(b) any offence under Part 1 of the Armed Forces Act 2006.

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## **Section 12**

### **Introduction:**

This section defines terms used in the Act.

### **Subsection (1):**

See General Notes: England and Wales; Magistrates' Courts; Crown Court; Court of Appeal; County Courts (Northern Ireland); Court of Appeal in Northern Ireland.

Service court – see subs. (2).

## **13 Commencement**

This Act comes into force on the day on which it is passed.

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### **Section 13**

#### **Introduction:**

This section commences the Act on the date of Royal Assent - 21<sup>st</sup> July 2008.

“The day on which it is passed” – see General Note: Royal Assent

## 14 Expiry of power to make witness anonymity orders

- (1) No witness anonymity order may be made under this Act after the relevant date.
  - (2) Subject to subsection (3), the relevant date is 31 December 2009.
  - (3) The Secretary of State may by order provide for the relevant date to be a date specified in the order that falls not more than 12 months after—
    - (a) 31 December 2009, or
    - (b) (if an order has already been made under this subsection) the date specified in the last order.
  - (4) Nothing in this section affects—
    - (a) the continuation in effect of a witness anonymity order made before the relevant date, or
    - (b) the power to discharge or vary such an order under section 6.
  - (5) An order under subsection (3)—
    - (a) is to be made by statutory instrument; and
    - (b) may not be made unless a draft of the instrument containing the order has been laid before and approved by a resolution of each House of Parliament.
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### Section 14

#### Introduction:

This section prevents the Act from being used after 31<sup>st</sup> December 2009 (although the deadline can be extended). See General Note: Sunset Clauses.

#### Subsection (3):

See General Note: Secretary of State.

#### Subsection (4):

By order – made by statutory instrument (subs. (5)(a)) subject to draft affirmative resolution (subs. (5)(b)). See General Notes: Statutory Instruments; Statutory Instruments: Draft Affirmative Resolution.

## 15 Short title and extent

(1) This Act may be cited as the Criminal Evidence (Witness Anonymity) Act 2008.

(2) Subject to subsection (3), this Act extends to England and Wales and Northern Ireland.

(3) The service courts provisions of this Act extend to England and Wales, Scotland and Northern Ireland; and in section 384 of the Armed Forces Act 2006 (c. 52) (extent to Channel Islands etc.) any reference to that Act includes a reference to the service courts provisions of this Act.

(4) In subsection (3) “ the service courts provisions of this Act” means the provisions of this Act so far as having effect in relation to service courts.

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### Section 15

#### Introduction:

This section provides for Short Title and extent. See General Notes: Short Title; Extent.

#### Subsection (2):

See General Notes: England and Wales; Northern Ireland.

#### Subsection (3):

As a result of this subsection the provisions about orders in military courts (a) will extend to Scotland, (b) will extend to the Isle of Man and the British overseas territories, possibly with modifications, and (c) may extend to the Channel Islands, with or without modifications. See General Note: Extraterritoriality.

**The remainder of this Act has not been reproduced for the purposes of this sample.**