

PART 22

EVIDENCE OF A COMPLAINANT'S PREVIOUS SEXUAL BEHAVIOUR

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When this Part applies

22.1. This Part applies in magistrates' courts and in the Crown Court where a defendant wants to—

- (a) introduce evidence; or
- (b) cross-examine a witness,

about a complainant's sexual behaviour despite the prohibition in section 41 of the Youth Justice and Criminal Evidence Act 1999(a).

[Note: Section 41 of the Youth Justice and Criminal Evidence Act 1999 prohibits evidence or cross-examination about the sexual behaviour of a complainant of a sexual offence, subject to exceptions.

See also—

- (a) *section 42 of the 1999 Act(b), which among other things defines 'sexual behaviour' and 'sexual offence';*
- (b) *section 43(c), which among other things, requires—*
 - (i) *an application under section 41 to be heard in private and in the absence of the complainant,*
 - (ii) *the reasons for the court's decision on an application to be given in open court, and*
 - (iii) *the court to state in open court the extent to which evidence may be introduced or questions asked; and*
- (c) *section 34, which prohibits cross-examination by a defendant in person of the complainant of a sexual offence (Part 23 contains relevant rules).]*

Application for permission to introduce evidence or cross-examine

22.2. The defendant must apply for permission to do so—

- (a) in writing; and

(a) 1999 c. 23.

(b) 1999 c. 23; section 42 was amended by paragraph 73 of Schedule 3 and Schedule 37 to the Criminal Justice Act 2003 (c. 44).

(c) 1999 c. 23; section 43(3) was amended by section 109(1) of, and paragraph 384(g) of Schedule 8 to, the Courts Act 2003 (c. 39).

- (b) not more than 28 days after the prosecutor has complied or purported to comply with section 3 of the Criminal Procedure and Investigations Act 1996(a) (disclosure by prosecutor).

[Note. See Part 3 for the court's general powers to consider an application with or without a hearing and to give directions.

At a pre-trial hearing a court may make binding rulings about the admissibility of evidence and about questions of law under section 9 of the Criminal Justice Act 1987(b); sections 31 and 40 of the Criminal Procedure and Investigations Act 1996(c); and section 8A of the Magistrates' Courts Act 1980(d).]

Content of application

22.3. The application must—

- (a) identify the issue to which the defendant says the complainant's sexual behaviour is relevant;
- (b) give particulars of—
 - (i) any evidence that the defendant wants to introduce, and
 - (ii) any questions that the defendant wants to ask;
- (c) identify the exception to the prohibition in section 41 of the Youth Justice and Criminal Evidence Act 1999 on which the defendant relies; and
- (d) give the name and date of birth of any witness whose evidence about the complainant's sexual behaviour the defendant wants to introduce.

Service of application

22.4. The defendant must serve the application on the court officer and all other parties.

Reply to application

22.5. A party who wants to make representations about an application under rule 22.2 must—

- (a) do so in writing not more than 14 days after receiving it; and
- (b) serve those representations on the court officer and all other parties.

Application for special measures

22.6. If the court allows an application under rule 22.2 then—

- (a) a party may apply not more than 14 days later for a special measures direction or for the variation of an existing special measures direction; and
- (b) the court may shorten the time for opposing that application.

(a) 1996 c. 25; section 3 was amended by section 82 of, and paragraph 7 of Schedule 4 to, the Regulation of Investigatory Powers Act 2000 (c. 23) and section 32 and section 331 of, and paragraphs 20 and 21 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

(b) 1987 c. 38; section 9 was amended by section 170 of, and Schedule 16 to, the Criminal Justice Act 1988 (c. 33), section 6 of the Criminal Justice Act 1993 (c. 36), sections 72, 74 and 80 of, and paragraph 3 of Schedule 3 and Schedule 5 to, Criminal Procedure and Investigations Act 1996 (c. 25), sections 45 and 310 of, and paragraphs 18, 52 and 54 of Schedule 36 and Part 3 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), article 3 of, and paragraphs 21 and 23 of S.I. 2004/2035, section 59 of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4) and Part 10 of Schedule 10 to the Protection of Freedoms Act 2012 (c. 9). The amendment made by section 45 of the Criminal Justice Act 2003 (c. 44) is in force for certain purposes; for remaining purposes it has effect from a date to be appointed.

(c) 1996 c. 25; section 31 was amended by sections 310, 331 and 332 of, and paragraphs 20, 36, 65 and 67 of Schedule 36 and Schedule 37 to, the Criminal Justice Act 2003 (c. 44).

(d) 1980 c. 43; section 8A was inserted by section 45 of, and Schedule 3 to, the Courts Act 2003 (c. 39) and amended by SI 2006/2493 and paragraphs 12 and 14 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

[Note. Special measures to improve the quality of evidence given by certain witnesses may be directed by the court under section 19 of the Youth Justice and Criminal Evidence Act 1999 and varied under section 20(a). An application for a special measures direction may be made by a party under Part 18 or the court may make a direction on its own initiative. Rule 18.13(2) sets the usual time limit (14 days) for opposing a special measures application.]

Court's power to vary requirements under this Part

22.7. The court may shorten or extend (even after it has expired) a time limit under this Part.

(a) 1999 c. 23; section 20(6) was amended by paragraph 384(a) of Schedule 8 to the Courts Act 2003 (c. 39).