



Circular No. 2015/02

Ministry of Justice

TITLE	REPORTING RESTRICTIONS APPLYING TO UNDER-18s: YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999 AND CRIMINAL JUSTICE AND COURTS ACT 2015
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This circular is addressed to

Lord Chief Justice, President of the Queen's Bench Division, Master of the Rolls, President of the Family Division, Senior Presiding Judge for England and Wales, Chairman of the Judicial College, Lords Justices of Appeal, High Court Judges, Presiding Judges, Resident Judges, Crown Court Judges, District Judges (Magistrates' Courts), Bench Chairmen, Director of Public Prosecutions, Director General of the National Crime Agency, Chief Officers of Police in England and Wales, Director General of HM Prison Service, Chief Executive of HM Courts and Tribunals Service, Chief Crown Prosecutors, Chief Executive of the Youth Justice Board for England and Wales, Chief Probation Officers, Director of Crime, Delivery Directors, Heads of Crime, Cluster Managers, Regional Support Units, Court Managers Crown Courts, Court Managers Magistrates' Courts, Justices' Clerks.

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Amendments

Reference	Detail	Date
Page 17, para 49	Clarification of duration of reporting restrictions.	09/04/2015
Annex A	Clarification of duration of reporting restrictions.	09/04/2015

REPORTING RESTRICTIONS APPLYING TO UNDER-18s: CHILDREN AND YOUNG PERSONS ACT 1933, YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999 AND CRIMINAL JUSTICE AND COURTS ACT 2015

Introduction

1. This circular should not be regarded as providing legal advice. Your own legal advice should be sought if there is any doubt or any queries about the application or interpretation of the legislation.

2. The Criminal Justice and Courts (CJ&C) Act 2015 amends and extends provisions in respect of reporting restrictions applying to under-18s in the Youth Justice and Criminal Evidence (YJCE) Act 1999, the Children and Young Persons Act (CYPA) 1933 and the Children and Young Persons Act (CYPA) 1963. The CJ&C Act 2015 provisions and amendments, together with the commencement of certain provisions in the YJCE Act 1999, will come into force on 13 April 2015. Furthermore section 39 of the CYPA 1933 will no longer apply to criminal proceedings. Instead the newly commenced section 45 of the YJCE Act 1999 will apply to criminal proceedings other than those that take place in or on appeal from the Youth Court (where section 49 of the CYPA 1933 will continue to apply).

3. Section 78 of the CJ&C Act 2015 makes provision in respect of lifetime reporting restrictions for victims and witnesses under the age of 18 involved in criminal proceedings or proceedings before a service court, adding a new s45A to the YJCE Act 1999. Section 79 amends section 39 of the Children and Young Persons Act (CYPA) 1933 so that reporting restrictions under that section apply to non-criminal proceedings and expands the scope of those reporting restrictions beyond newspapers and sound and television broadcasts to cover any communication to the public at large or any section of the public, thereby including online content and social media. Section 80 of and Schedule 15 to the CJ&C Act 2015 insert a new Schedule 1A into the CYPA 1933 and Schedule 2A into the YJCE Act 1999 to address the position

of providers of information society services¹ in respect of offences under section 39 of the CYPA 1933 and section 49 of the YJCE Act 1999.²

4. Section 45 of and certain provisions within Schedule 2 to the YJCE Act 1999 will also come into force on 13 April 2015. Section 45 of the YJCE Act 1999 provides for a reporting restriction applying to under-18s involved in criminal proceedings in any court (apart from proceedings in and on appeal from the Youth Court). The commenced provisions within Schedule 2 to the YJCE Act 1999 expand the scope of reporting restrictions in the Youth Court and on appeal from it (under section 49 of the CYPA 1933) beyond newspapers and sound and television broadcasts to include online content.

5. The commenced provisions in the CJ&C Act 2015 and YJCE Act 1999 extend to England and Wales. They will be brought into force by the *Criminal Justice and Courts Act 2015 (Commencement Order No.1 and Saving and Transitional Provisions) Order 2015* and *The Youth Justice and Criminal Evidence Act 1999 (Commencement No.14) (England and Wales) Order 2015*.

Background

6. The position prior to the CJ&C Act 2015 changes was that reporting restrictions applying specifically to under-18s ended automatically when the individual who was the subject of the reporting restriction order reached the age of 18. This interpretation of the law was confirmed in two High Court decisions. In *T v DPP & North East Press* [2003] EWHC 2408 (Admin) the High Court held that reporting restrictions under section 49 of the CYPA 1933 did not last beyond the age of 18. More recently in *JC and RT v the Central Criminal Court and others* [2014] EWHC 1041 it was held that orders made under section 39 of the CYPA 1933 expired automatically once a child or young person reached the age of 18. The President of the Queen's Bench

¹ "Information society services" is defined in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of the Technical Standards Directive 98/34/EC, as amended by Directive 98/48/EC, and is summarised in recital 17 to the E-Commerce Directive as covering "any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service". This covers a wide range of economic activities that take place online and the remuneration does not have to be by the user of the service e.g. social media and search engines are information society services. However, the use of email or equivalent electronic communications (e.g. by persons acting outside their trade, business or profession) is *not* an information society service (although it may be covered by the new and extended youth reporting restrictions referred to in this circular). Further guidance on what constitutes an "information society service" can be viewed in paragraphs 2.13 onwards of the Government publication: *A Guide for Business to the Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013)*

[<http://webarchive.nationalarchives.gov.uk/20121212135622/http://www.bis.gov.uk/files/file14635.pdf>]

² Please note that the Electronics Commerce (EC Directive) Regulations 2002 (SI 2002/2013) already applied to section 49 of the CYPA 1933 as amended by Schedule 2 of the YJCE 1999. Therefore the new Schedule 1A of the CYPA 1933, which addresses the position of providers of information society services, applies only to section 39 of the CYPA 1933 because it has been amended by the CJ&C Act 2015. The Electronics Commerce (EC Directive) Regulations 2002 (SI 2002/2013) as applicable to section 49 of the CYPA 1933 contain similar provisions to those in the new Schedule 1A of the CYPA 1933 and Schedule 2A of the YJCE 1999.

division commented that “it is truly remarkable” that legislation provides for discretionary *lifelong* reporting restrictions for adult witnesses but reporting restrictions for under-18s end at the age of 18. He went on to say that “victims and witnesses need individual and tailor-made protection within the criminal justice system” and that “it is for Parliament to fashion a solution: the problem requires to be addressed as a matter of real urgency.” In response the Government has made changes to reporting restrictions applying to under-18s in the CJ&C Act 2015 so that, in circumstances similar to those applying to adult witnesses, as victims and witnesses they too may be subject to lifelong reporting restrictions.

Purpose of circular

7. The purpose of this circular is to explain the key changes to reporting restrictions applying to under-18s, which are as follows:

- provide any criminal court in England and Wales or any service court with the discretion to order, under specified circumstances, a lifetime reporting restriction in respect of a victim or witness under the age of 18 during the proceedings. This will be achieved by commencing section 45A of the YJCE Act 1999; and
- widen the scope of reporting restrictions applying to under-18s in criminal and non-criminal proceedings so that they no longer apply to print and broadcast media only but include, for example, online content. This will be achieved by:
 - bringing into force section 45 of the YJCE Act 1999 which will apply, instead of section 39 of the CYPA 1933, to any criminal court other than the Youth Court and to “any publication”;
 - amending section 39 of the CYPA 1933 to apply a broader definition of “publication” in non-criminal proceedings; and
 - bringing into force provisions in Schedule 2 to the YJCE Act 1999 so that in criminal proceedings section 49 of the CYPA 1933 applies to “any publication” in Youth Court proceedings or in relation to any matter on appeal from the Youth Court.

Description of the sections

Lifetime reporting restrictions for victims and witnesses under the age of 18 – section 45A of the Youth Justice and Criminal Evidence Act 1999 (new section)

8. Section 78 of the CJ&C Act 2015 inserts section 45A into the YJCE Act 1999 which makes provision in respect of lifetime reporting restrictions for victims and witnesses under the age of 18, in specific circumstances, involved in criminal proceedings or proceedings before a service court. It is an additional discretionary power available alongside other statutory reporting restrictions that are currently available to under-18s in criminal proceedings

which may be exercised by, for example, the Youth Court, adult magistrates' courts or the Crown Court. [Annex A](#) summarises some of section 45A's features and how it fits into the overall statutory reporting restrictions framework.

Making a reporting direction

9. At any time during criminal proceedings, and subject to the test set out at paragraph 11 below, the court may make a "reporting direction" (section 45A(2)). This can apply to:

- a witness other than an accused in the proceedings (section 45A(3)(a)); and/or
- a victim i.e. a person against whom the offence, which is the subject of the criminal proceedings, is alleged to have been committed (section 45A(3)(b)).

10. This reporting direction applies for the lifetime of the victim or witness so that no matter relating to them may be included in any publication if it is likely to lead to them being identified by members of the public as being concerned in the criminal proceedings (section 45A(2)). Such matters or information might, for example, include the victim or witness's name, address, the identity of their school, educational establishment, place of work or any still or moving picture (section 45A(4)). It should be noted that the term "publication" is defined in section 63 of the YJCE 1999 and includes:

"...any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public (and for this purpose every relevant programme shall be taken to be so addressed), but does not include an indictment or other document prepared for use in particular legal proceedings."

The term "publication", as well as applying to print and broadcast media, can apply to information published online including, for example, information posted on social media sites such as Facebook or Twitter.

11. The test for making a reporting direction under section 45A (section 45A(5)) can be summarised as follows: the court must be satisfied that fear or distress on the part of the victim or witness in connection with being identified by members of the public as a person concerned in the proceedings is likely to diminish the quality of the victim's or witness's evidence or the level of cooperation they give to any party to the proceedings in connection with that party's presentation of its case. It is therefore similar to the test for making a lifetime reporting restrictions order in respect of an adult witness as already set out in legislation under section 46(3).

12. When considering the test set out above the court must in particular take into account (section 45A(6) and (7)):

- the nature and alleged circumstances of the offence to which the proceedings relate;

- the age of the victim or witness who is the subject of the reporting restriction application;
- the social and cultural background and ethnic origins of the victim or witness if they appear relevant to the court;
- the domestic, educational and employment circumstances of the victim or witness if they appear relevant to the court;
- any religious beliefs or political opinions of the victim or witness if they appear relevant to the court;
- any behaviour towards the victim or witness the subject of the reporting restriction application on the part of an accused, members of the family or associates of an accused, or any other person who is likely to be an accused or witness in the proceedings;
- any views expressed by the victim or witness the subject of the reporting restriction application and, where they are under the age of 16, by an “appropriate person” so long as s/he is not the accused. An appropriate person may be a parent or guardian (i.e. have parental responsibility for the victim or witness). If the victim or witness is under the age of 16 and is looked after by a local authority the appropriate person may be a representative of the local authority or a parent or guardian of the victim or witness with whom they are allowed to live.

13. The court must also have regard to the welfare of the victim or witness who is the subject of the reporting restriction application, whether it would be in the interest of justice to make the reporting direction and the public interest in avoiding the imposition of a substantial and unreasonable restriction on the reporting of proceedings.

Lifting or varying a reporting direction

14. The court or appellate court may make an “excepting direction” dispensing, to any extent it specifies, with the restrictions imposed by the reporting direction, subject to the test set out below. The excepting direction may be given at the time the reporting direction is given or subsequently and the excepting direction may be varied or revoked by the court or an appellate court (section 45A(14)).

15. The test for making an excepting direction (section 45A(11)) can be summarised as follows:

the court is satisfied that it is necessary in the interests of justice to make the excepting direction

or

the court is satisfied that the effect of the reporting direction is to impose a substantial and unreasonable restriction on the reporting of the proceedings and it is in the public interest to remove or relax the restriction.

16. When considering the “public interest” the court must have regard to, in particular (section 52 YJCE Act 1999), the public interest in:

- the open reporting of crime;
- the open reporting of matters relating to human health or safety;
- the prevention and exposure of miscarriages of justice;
- the welfare of the victim or witness; and
- any views expressed by the victim or witness or the appropriate person on behalf of a victim or witness who is under 16 years of age so long as s/he is not the accused. See paragraph 12 in respect of who may be an “appropriate person”.

17. No excepting direction can be given by reason only of the fact that the proceedings have been determined in any way or abandoned.

18. In determining whether to make an excepting direction the court must have regard to the welfare of the victim or witness (section 45A(13)).

Breaches of the reporting direction and defences to alleged breach

19. Section 78 of the CJ&C Act 2015 amends section 49 of the YJCE Act 1999 so that if a publication includes any matter in contravention of a reporting direction under section 45A of the YJCE Act 1999 the person publishing it is guilty of a criminal offence.

20. Where the publication is a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical is guilty of an offence (section 49(2) YJCE Act 1999). Where the publication is a relevant programme (i.e. a programme within a programme service within the meaning of the Broadcasting Act 1990 e.g. on TV or the radio) any body corporate, engaged in providing the programme service and any person having functions in relation to the programme corresponding to those of an editor of a newspaper is guilty of an offence (section 49(3) YJCE Act 1999). In the case of any other publication any person publishing it is guilty of an offence e.g. in respect of a matter published online on social media.

21. A person found guilty of an offence is liable on summary conviction to a fine not exceeding level five on the standard scale.³

22. Where a person is charged with an offence in respect of a breach of a reporting direction it is a defence to prove that at the time of the alleged offence s/he was not aware, and neither suspected nor had reason to suspect, that the publication included the matter or report in question (section 50(1) YJCE Act 1999).

23. It is also a defence to prove that the victim or witness, or the appropriate person if the victim or witness is under 16 years of age, had given

³ Provisions in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 increased the power of magistrates’ courts so that they will be able to impose unlimited fines for the most serious offences committed on or after 12 March 2015 (after a reporting restrictions order under section 45A of the YJCE Act 1999 has been made). Courts will continue to set fines according to the seriousness of the offence and the means of the offender.

written consent to the inclusion of the matter in contravention of the reporting direction (section 50(6A) YJCE Act 1999). Such written consent is not a defence if given by the victim or witness when they are under 18 years of age or where it is proved that any person interfered with the peace or comfort of the victim or witness giving the consent or the appropriate person with the intent of obtaining the consent (section 50(6B) and (8) YJCE Act 1999). See paragraph 12 in respect of who may be an “appropriate person”.

Criminal proceedings other than in the Youth Court

24. Section 45 of the YJCE Act 1999 will apply to criminal proceedings in any court other than the Youth Court (section 45(1) and (2) YJCE Act 1999) or on appeal from it. Section 39 of the CYPA 1933 will therefore no longer apply in such proceedings but will continue to apply in non-criminal proceedings. However section 39 will continue to apply to proceedings, no matter where they take place, in respect of civil injunctions for anti-social behaviour and Criminal Behaviour Orders. [Annex A](#) sets out in which proceedings section 45 of the YJCE Act 1999 and section 39 of the CYPA 1933 now apply.

Making a reporting restriction under section 45 of the YJCE 1999 (criminal proceedings other than in the Youth Court)

25. Orders made under section 45 of the YJCE Act 1999 apply up until the age of 18 (or until they are otherwise lifted, prior to the individual’s 18th birthday) and is therefore different to the new power under section 45A which provides for *lifetime* reporting restrictions for under-18s who are *victims or witnesses* (not defendants). Under section 45 of the YJCE Act 1999 the court may direct that no matter relating to any person concerned in the proceedings shall while s/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 or her as a person concerned in the proceedings. The person concerned in the proceedings may be a victim, witness or defendant (section 45(7) YJCE Act 1999) and, when deciding whether to make the direction, the court must have regard to their welfare.

26. The matters that may be subject to the direction under section 45 of the YJCE Act 1999 if their publication is likely to lead members of the public to identify the victim, witness or defendant as being concerned in the proceedings include in particular:

- his or her name;
- his or her address;
- the identity of any school or other educational establishment attended by him or her;
- the identity of any place of work; and
- any still or moving picture of him or her (section 45(8) YJCE Act 1999).

27. The term “publication” is defined in section 63 of the YJCE Act 1999 as including:

“...any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section

of the public (and for this purpose every relevant programme shall be taken to be so addressed), but does not include an indictment or other document prepared for use in particular legal proceedings.”

The term “publication”, as well as applying to print and broadcast media, can also apply to information published online including, for example, information posted on social media.

Lifting or varying a reporting restriction under section 45

28. A court or appellate court may make an “excepting direction” dispensing, to any extent it specifies in the direction, with a reporting restriction made under section 45 YJCE Act 1999. To do so the court must be satisfied that the effect of the reporting restriction, having had regard to the welfare of the victim, witness or defendant subject to it, is to impose a substantial and unreasonable restriction on the reporting of proceedings and that it is in the public interest to make an excepting direction. The excepting direction may be given at the time the reporting restriction is made or subsequently and may be varied or revoked by the court or appellate court (section 45(5), (6) & (10) YJCE Act 1999).

29. When considering the public interest the court must have regard to, in particular, section 52 YJCE Act 1999 which is summarised at paragraph 16 above.

Breaches of the reporting restriction and defences to alleged breach

30. If a publication includes any matter in contravention of a reporting direction under section 45 of the YJCE Act 1999 the person publishing it is guilty of a criminal offence (section 49(1) YJCE Act 1999).

31. Where the publication is a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical is guilty of an offence (section 49(2) YJCE 1999). Where the publication is a relevant programme (i.e. a programme within a programme service within the meaning of the Broadcasting Act 1990 e.g. on TV or the radio) any body corporate engaged in providing the programme service or any person having functions in relation to the programme corresponding to those of an editor of a newspaper is guilty of an offence (section 49(3)). In the case of any other publication any person publishing it is guilty of an offence e.g. in respect of a matter published online on social media.

32. A person found guilty of an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale (section 49(5)).⁴

33. Where a person is charged with an offence in respect of a breach of a reporting direction it is a defence to prove that at the time of the alleged offence s/he was not aware, and neither suspected nor had reason to

⁴ Provisions in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 increased the power of magistrates’ courts so that they will be able to impose unlimited fines for the most serious offences committed on or after 12 March 2015 (after a reporting restriction order under section 45 of the YJCE Act 1999 has been made). Courts will continue to set fines according to the seriousness of the offence and the means of the offender.

suspect, that the publication included the matter or report in question (section 50(1) YJCE 1999).

Civil and family proceedings

34. Section 39 of the CYPA 1933 has been amended by section 79 of the CJ&C Act 2015 to limit its application to proceedings other than criminal proceedings, so it will continue to apply to civil and family proceedings. Section 39 will continue to apply to proceedings in respect of Anti-Social Behaviour Orders, Criminal Behaviour Orders and, once the relevant provisions in the Anti-Social Behaviour Crime and Policing Act 2014 come into force, civil injunctions.

35. Furthermore, currently section 39 of the CYPA 1933 applies only in respect of print and broadcast media. Section 79(7) of the CJ&C Act 2015 inserts a new subsection (3) into section 39 of the CYPA 1933 to provide a definition of “publication” as follows:

“publication” includes any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public (and for this purpose every relevant programme shall be taken to be so addressed), but does not include a document prepared for use in particular legal proceedings; “relevant programme” means a programme included in a programme services within the meaning of the Broadcasting Act 1990.”

The term “publication” in section 39 of the CYPA 1933, as well as applying to printed and broadcast media, will now also apply to information published online including, for example, information posted on social media.

Online content

36. Through commencing the provisions in the CJ&C Act 2015 described above and provisions within the YJCE Act 1999, the reporting restrictions applying specifically to under-18s in court proceedings under sections 39 and 49 of the CYPA 1933 and sections 45 and 45A of the YJCE Act 1999 all rely on the same definition of “publication”. These provisions therefore all apply to online content as well as print and broadcast media. For example commencement of paragraph 3, Schedule 2 to the YJCE Act 1999 broadens the application of section 49 of the CYPA 1933 beyond print and broadcast media to include online content by inserting the following definition of “publication”:

“In this section “publication” includes any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public (and for this purpose every relevant programme shall be taken to be so addressed), but does not include an indictment or other document prepared for use in particular legal proceedings”.

37. Section 80 of the CJ&C Act 2015 inserts Schedule 1A and Schedule 2A into the CYPA 1933 and YJCE Act 1999 respectively to transpose parts of the EU’s E-Commerce Directive dealing with breaches of

domestic law (in this case reporting restrictions applying to under-18s) by providers of information society services⁵.

38. Below is a summary the main provisions as they apply in respect of the offences under section 39 of the CYPA 1933 and section 49 of the YJCE Act 1999. Please refer to Schedule 1A to the CYPA 1933 and Schedule 2A to the YJCE Act 1999 to see the full list of provisions.⁶

- extending liability for breach of the above reporting restrictions to a service provider established in England and Wales (and in Scotland and Northern Ireland when dealing with a section 49 YJCE 1999 offence) in respect of a matter published in a European Economic Area state other than the UK and permitting breach proceedings to be dealt with in England and Wales (paragraph 1, Schedule 1A CYPA 1933 and Schedule 2A YJCE Act 1999);
- proceedings cannot be taken against a non-UK service provider in a European Economic Area state in respect of anything done in the course of providing information society services unless certain conditions are satisfied (paragraph 2, Schedule 1A CYPA 1933 and Schedule 2A YJCE Act 1999);
- a service provider (“conduit”) is not guilty of an offence where the information society service provided consists of the provision of access to a communication network or the transmission in a communication network of information provided by a recipient of the service; and

⁵ “Information society services” is defined in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of the Technical Standards Directive 98/34/EC, as amended by Directive 98/48/EC, and is summarised in recital 17 to the E-Commerce Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”. This covers a wide range of economic activities that take place on online and the remuneration does not have to be by the user of the service e.g. social media and search engines are information society services. However, the use of email or equivalent electronic communications (e.g. by persons acting outside their trade, business or profession) is *not* an information society service (although it may be covered by the new and extended youth reporting restrictions referred to in this circular). Further guidance on what constitutes an “information society service” can be viewed in paragraphs 2.13 onwards of the Government publication: *A Guide for Business to the Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013)*

[<http://webarchive.nationalarchives.gov.uk/20121212135622/http://www.bis.gov.uk/files/file14635.pdf>]

⁶ Please note that the Electronics Commerce (EC Directive) Regulations 2002 (SI 2002/2013) already applied to section 49 of the CYPA 1933 as amended by Schedule 2 of the YJCE 1999. Therefore the new Schedule 1A of the CYPA 1933, which addresses the position of providers of information society services, applies only to section 39 of the CYPA 1933 because it has been amended by the CJ&C Act 2015. The Electronics Commerce (EC Directive) Regulations 2002 (SI 2002/2013) as applicable to section 49 of the CYPA 1933 contain similar provisions to those in the new Schedule 1A of the CYPA 1933 and Schedule 2A of the YJCE 1999.

- if the service provider does not initiate the transmission, select the recipient of the transmission or select or modify the information contained in the transmission.
- however it may be guilty of an offence if it stores the information for longer than is reasonably necessary for the transmission (paragraph 3 of Schedule 1A CYPA 1933 and Schedule 2A YJCE Act 1999).
- a service provider is not guilty of an offence in respect of the automatic, intermediate and temporary storing of information (“caching”) where the storage of information is solely for the purpose of making more efficient the onward transmission of information to other recipients of the service at their request; on condition that-
 - the service provider does not modify the information;
 - he complies with any conditions attached to having access to the information; and
 - he acts expeditiously to remove the information where he obtains actual knowledge that the information at the initial source of the transmission has been removed from the network, access to the information has been disabled, or a court or administrative authority has ordered its removal or disablement (paragraph 4 of Schedule 1A CYPA 1933 and Schedule 2A YJCE Act 1999).⁷
- the service provider is not guilty of an offence in the course of providing information society services by storing the information provided by the recipient of the service where:
 - the recipient of the service is not acting under the authority or control of the service provider;
 - the service provider has no actual knowledge when the information was provided that it consisted of or included matter whose inclusion in a publication is prohibited by a the reporting restrictions referred to above;
 - the service provider on obtaining knowledge that the matter is prohibited, expeditiously removes the information or disable access to it (paragraph 5 of Schedule 1A CYPA 1933 and Schedule 2A YJCE Act 1999) (“notice and takedown”).

⁷ There are other conditions specified in the regulations but have not been included in this Circular in the interests of brevity.

Transitional arrangements

39. A summary of the transitional arrangements can be found at [Annex B](#). For the purpose of transitional arrangements, other than in service courts, the new section 45A provides that proceedings are considered to have commenced in accordance with section 15(2) of the Prosecution of Offences Act 1985; that is, they have commenced where a:

- justice of the peace issues a summons under section 1 of the Magistrates' Courts Act 1980, when the information for the offence is laid before him or her;
- justice of the peace issues a warrant for the arrest of any person under that section when the information for the offence is laid before him or her;
- public prosecutor issues a written charge and requisition for the offence, when the written charge and requisition are issued;
- person is charged with the offence after being taken into custody without a warrant, when s/he is informed of the particulars of the charge;
- bill of indictment charging a person with an indictable offence is preferred by the direction of the Court of Criminal Appeal; or by the direction or with the consent of a High Court Judge; or it is preferred with the consent of a Crown Court Judge (following a declaration of approval by that court in relation to a deferred prosecution agreement).

Criminal proceedings that are ongoing at the date sections 78 to 80 of the CJ&C Act 2015 commence – 13 April 2015

40. Where criminal proceedings are ongoing at the date sections 78 to 80 of the CJ&C Act 2015 commence (13 April 2015), the court can exercise its discretion to make a reporting restriction order under section 45A of the YJCE Act 1999 on or after the date of commencement (13 April 2015).

41. Where criminal proceedings are ongoing at the date sections 78 to 80 of the CJ&C Act 2015 commence (13 April 2015) and a reporting restriction order under section 39 of the CYPA 1933 has previously been made, section 39 will continue to apply as it previously did until those proceedings have concluded or until the expiry of the reporting restriction order (see section 79(12) of the CJ&C Act 2015). However, the wider definition of "publication" inserted into section 39 of the CYPA 1933 by section 79 of the CJ&C Act 2015 will not apply to the previously made order. The court may consider making a *new reporting restrictions order* under section 39 (as amended by the CJ&C Act 2015) on or after the date of commencement (13 April 2015). Where information has been published prior to the date of commencement (13 April 2015) that engages the definition of "publication" (e.g. the publication is online rather than through print or broadcast media), this prior act of publication will not amount to a breach of section 39 of the

CYPA 1933. However where a reporting restriction order has been made under the amended section 39 on or after the date of commencement (13 April 2015), information *subsequently published* or re-published online may be in breach of the order.

42. Where criminal proceedings are ongoing at the date sections 78 to 80 of the CJ&C Act 2015 commence (13 April 2015) and an order under section 39 of the CYPA 1933 has not previously been made, the court may make an order under the amended section 39 on or after the date of commencement (13 April 2015). The wider definition of “publication” inserted into section 39 of the CYPA 1933 by section 79 of the CJ&C Act 2015 will apply to such orders. Where information has been published prior to the date of commencement (13 April 2015) that engages the definition of “publication” (e.g. the publication is online rather than through print or broadcast media), this act of publication will not amount to a breach of section 39 of the CYPA 1933. However information published online on or after the date of commencement may do so if an order has been made under the amended section 39 of the CYPA 1933 on or after commencement.

43. Where criminal proceedings in, or on appeal from, the Youth Court are ongoing on the date of commencement and reporting restrictions under section 49 of the CYPA 1933 apply, the wider definition of “publication” inserted into section 49 by paragraph 3 of Schedule 2 of the YJCE Act 1999 applies. Where information has been published prior to the date of commencement that engages the definition of “publication” (e.g. the publication is online rather than through print or broadcast media), this act of publication will not amount to a breach of section 49 of the CYPA 1933. However information published online on or after the date of commencement (13 April 2015) may do so.

Criminal proceedings that commence on or after the date of commencement

44. In criminal proceedings that are **not** in the Youth Court, nor on appeal from it, and commence on or after the date of commencement, the court may make a reporting restriction order under section 45 and/or section 45A of the YJCE Act 1999. It cannot make a reporting restriction order under section 39 of the CYPA 1933.

45. In the Youth Court, a reporting restriction order under section 45A of the YJCE Act 1999 may also be made on or after the date of commencement.

46. For the purpose of transitional arrangements, proceedings are considered to have concluded once all appellate proceedings have concluded. The new provisions described in this circular do not affect proceedings that have concluded before the date these provisions commence.

Examples

47. For example where criminal proceedings in, or on appeal from, the Youth Court have been completed before 13 April 2015, information published on a social media site identifying an under-18 as being concerned in those proceedings would not breach section 49 of the CYPA 1933. However where a case in, or on appeal from, the Youth Court is ongoing as at 13 April 2015, and such information is subsequently published on or after the date of commencement on a social media site, it is possible that that act of publication would be in breach of section 49 of the CYPA 1933.

48. Where a reporting restriction order was made by a criminal court under section 39 of the CYPA 1933 prior to 13 April 2015, that order remains in force unless varied or revoked by the court or the subject of the order turns 18 years of age. If the proceedings are ongoing as at 13 April 2015, the court may subsequently make an order under the amended section 39 of the CYPA 1933 (or section 45A of the YJCE Act 1999 if appropriate) e.g. to ensure that the reporting restriction applies to online content. However information published on a social media site identifying an under-18 as being concerned in those proceedings would not breach section 39 of the CYPA 1933 or section 45A of the YJCE 1999 unless the information was published online or otherwise after the court had made a reporting restriction order under those sections.

Children who turn 18 years of age during proceedings

49. Where proceedings are ongoing as at 13 April 2015 and the child turns 18 years of age on or after that date, reporting restriction orders made under sections 39 and 49 of the CYPA 1933 and section 45 of the YJCE Act 1999 will expire at the time the child turns 18, unless the reporting restriction order has already been lifted by a court.

50. Where proceedings are ongoing on 13 April 2015 and the child turns 18 years of age on or after that date, an order under section 45A of the YJCE Act 1999 may be made up until the proceedings have been concluded. Proceedings are considered to have concluded once all appellate proceedings have concluded.

Amendments to the Criminal Procedure Rules

51. The Criminal Procedure Rules 2015, due to be made this summer, will amend Criminal Procedure rule 16.4 so that the rule refers explicitly to section 45A YJCE Act 1999 as well as to section 46. The application procedure will be substantially the same under both sections.

Useful links

Criminal Justice and Courts Act 2015:

www.legislation.gov.uk/ukpga/2015/2/contents

Explanatory notes on the Criminal Justice and Courts Act 2015:

www.legislation.gov.uk/ukpga/2015/2/notes/contents

Annex A: overview of statutory reporting restrictions as of 13 April 2015

	Type of court proceedings	Whom it applies to	Does it apply to online content?	Automatic or by court order (discretion)?	Can it be lifted?	Can it be varied?	Duration of the reporting restriction if not lifted.	Notes.
Section 39 CYPA 1933	- Civil & family proceedings. - Proceedings in any court in respect of civil orders dealing with anti-social behaviour.	Victims, witnesses & defendants under the age of 18 when proceedings commence.	Yes.	Court order (discretion)	Yes.	Yes.	Until the age of 18.	- No longer applies to criminal proceedings. - Scope of possible restriction has been expanded to include online content.
Section 49 CYPA 1933	Youth Court & proceedings on appeal from it.	Victims, witnesses & defendants under the age of 18 when proceedings commence.	Yes.	Automatic.	Yes.	Yes.	Until the age of 18.	Scope of possible restriction has been expanded to include online content.
Section 45 YJCE 1999	Criminal proceedings in any court other than the Youth Court.	Victims, witnesses & defendants under the age of 18 when proceedings	Yes.	Court order (discretion)	Yes.	Yes.	Until the age of 18.	Replaces section 39 of the CYPA 1933 in respect of criminal proceedings

	Type of court proceedings	Whom it applies to	Does it apply to online content?	Automatic or by court order (discretion)?	Can it be lifted?	Can it be varied?	Duration of the reporting restriction if not lifted.	Notes.
		commence.						other than in the Youth Court.
Section 45A YJCE 1999	Criminal proceedings in any court including the Youth Court.	Victims & witnesses under the age of 18 when proceedings commence.	Yes.	Court order (discretion)	Yes.	Yes.	Lifetime of the individual subject of the order	New provision for victims & witnesses under the age of 18; operates in addition to other reporting restrictions' powers
Section 46 YJCE 1999	Criminal proceedings in any court.	Adult (minimum of 18years old) witnesses.	Yes.	Court order (discretion)	Yes.	Yes.	Lifetime.	

Annex B: transitional provisions

**13 April 2015 -
provisions in CJ&C
Act 2015 and YJCE
Act 1999 commence**

Information published online
on or after commencement
(13 April 2015) may breach
s.49 CYPA 1933

**Criminal case in the Youth Court, or on appeal from the Youth Court, that starts *prior to* 13 April 2015 –
s.49 CYPA 1933 automatically applies**

Information published online
before commencement (13
April 2015) will not breach
s.49 CYPA 1933

Reporting restriction under s.45A
YJCE Act 1999 may be made **on or
after** commencement (13 April 2015)



Criminal case in a criminal court other than in, or on appeal from, the Youth Court that starts *prior to* 13 April 2015

Information published online before
commencement (13 April 2015) will not
breach s.39 CYPA 1933 where that order
has already been made before 13 April 2015

Reporting restriction under s.45A
YJCE Act 1999 may be made **on or
after** commencement (13 April 2015)

Reporting restriction under s.39
CYPA 1933 (as amended by the
CJ&C Act 2015) may be made **on or
after** commencement (13 April 2015)

Information published online may only breach
an order under the amended s.39 CYPA 1933
if it is published after the order is made

**13 April 2015 -
provisions in CJ&C
Act 2015 and YJCE
Act 1999 commence**

Information published online **on or
after** proceedings commence may
breach s.49 CYPA 1933

**Criminal case in the Youth Court, or on appeal from the Youth Court, that starts *on or
after* 13 April 2015 – section 49 CYPA 1933 automatically applies**

Reporting restriction under s.45A of YJCE Act 1999
may be made

**Criminal case in a criminal court other than in, or on appeal from, the Youth Court that
starts *on or after* 13 April 2015**

Reporting restriction order under s.45 YJCE Act
1999 may be made, but a reporting restriction
under s.39 CYPA 1933 may not be made

Information published online after an
order under s.45 YJCE 1999 is made
may breach the reporting restriction

Reporting restriction under s.45A YJCE Act 1999
may be made