



# Evidence (Children) Regulation 2004

under the

Evidence (Children) Act 1997

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Evidence (Children) Act 1997*.

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Attorney General

## Explanatory note

The object of this Regulation is to remake, without any changes of substance, the *Evidence (Children) Regulation 1999*. That Regulation will be repealed on 1 September 2004 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation deals with the procedure by which a recording made by an investigating official of an interview with a child where the child was questioned regarding the alleged commission of an offence by another person can be made available to the accused person and his or her lawyer.

This Regulation is made under the *Evidence (Children) Act 1997*, including sections 12 (2) and 31 (the general regulation-making power).

This Regulation comprises or relates to matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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## Evidence (Children) Regulation 2004

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Evidence (Children) Act 1997

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Evidence (Children) Regulation 2004*.

#### 2 Commencement

This Regulation commences on 1 September 2004.

**Note.** This Regulation replaces the *Evidence (Children) Regulation 1999* which is repealed on 1 September 2004 by section 10 (2) of the *Subordinate Legislation Act 1989*.

#### 3 Definitions and notes

(1) In this Regulation:

***defence notice*** means a notice given by an accused person or his or her lawyer under clause 5.

***prosecuting authority***, in relation to a prosecution, means the Director of Public Prosecutions, or a police officer, who is responsible for the conduct of the prosecution.

***prosecuting authority notice*** means a notice given by a prosecuting authority under clause 4.

***recorded interview*** means a recording made by an investigating official of an interview during which a child is questioned by an investigating official in connection with the investigation of the commission or possible commission of an offence by the child or any other person.

***responsible person*** means a person named in a prosecuting authority notice as referred to in clause 4 (2) (d).

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*the Act* means the *Evidence (Children) Act 1997*.

- (2) Notes included in this Regulation do not form part of this Regulation.

## Part 2 Recorded interviews

### 4 Prosecuting authority to notify accused of intention to adduce recorded interview

- (1) For the purposes of section 12 (2) of the Act, if a prosecuting authority intends to adduce evidence of a previous representation by a child wholly or partly by means of a recorded interview or a transcript of a recorded interview in a criminal proceeding where the child who made the representation is not the accused person, the prosecuting authority must notify the accused person or his or her lawyer (if any) of the intention in accordance with this section.
- (2) A notice under subclause (1) must:
  - (a) be in writing, and
  - (b) specify each recorded interview (or transcript of such interview) that the prosecuting authority intends to adduce, and
  - (c) contain information to the effect that the accused person and his or her lawyer are entitled to listen to or view each recorded interview at a police station or other place nominated by the prosecuting authority, and
  - (d) set out the name of a person responsible for arranging access to each recorded interview.
- (3) A notice under subclause (1) must be given to the accused person or his or her lawyer at least 14 days before the evidence for the prosecution is given in the proceeding.

**Note.** Section 76 of the *Criminal Procedure Act 1986* provides that a transcript of a recorded interview is not admissible in committal proceedings unless the defendant has been given, in accordance with the regulations under section 12 (2) of the *Evidence (Children) Act 1997*, a reasonable opportunity to listen to or view the recorded interview.

### 5 Accused may notify prosecuting authority of intention to access recorded interview

- (1) An accused person or lawyer who receives a prosecuting authority notice may notify the responsible person that he or she requires access to any one or more of the recorded interviews specified in the notice.
- (2) A notice under subclause (1) must:
  - (a) be in writing, and

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- (b) set out the name of the accused person and his or her lawyer (if any), and
- (c) specify the recorded interview or interviews to which the accused person or his or her lawyer require access, and
- (d) be given to the responsible person at least 7 days before the evidence for the prosecution is given in the proceeding, unless the court gives leave for the notice to be given at a later time.

### **6 Recorded interview to be made available within 7 days**

- (1) A responsible person who receives a defence notice that complies with clause 5 must give the persons named in the defence notice as referred to in clause 5 (2) (b) access to listen to or view the recorded interview within 7 days (or such shorter period of time as the court directs) after the day on which the responsible person receives the defence notice.
- (2) The responsible person may give the accused person or his or her lawyer access to listen to or view the recorded interview on more than one occasion.

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**Part 3      Miscellaneous**

**7    Savings**

Any act, matter or thing that, immediately before the repeal of the *Evidence (Children) Regulation 1999* had effect under that Regulation continues to have effect under this Regulation.