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STATUTORY INSTRUMENTS

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**1999 No. 2789**

**The Criminal Evidence (Northern Ireland) Order 1999**

**PART II**

**SPECIAL MEASURES DIRECTIONS IN CASE OF  
VULNERABLE AND INTIMIDATED WITNESSES**

*Special measures directions*

**Special provisions relating to child witnesses**

**9.—**(1) For the purposes of this Article—

- (a) a witness in criminal proceedings is a “child witness” if he is an eligible witness by reason of Article 4(1)(a) (whether or not he is an eligible witness by reason of any other provision of Article 4 or 5);
- (b) <sup>F1</sup> .....
- (c) a “relevant recording”, in relation to a child witness, is a video recording of an interview of the witness made with a view to its admission as evidence in chief of the witness.

(2) Where the court, in making a determination for the purposes of Article 7(2), determines that a witness in criminal proceedings is a child witness, the court must—

- (a) first have regard to paragraphs (3) to [<sup>F2</sup>(4C)]; and
- (b) then have regard to Article 7(2);

and for the purposes of Article 7(2), as it then applies to the witness, any special measures required to be applied in relation to him by virtue of this Article shall be treated as if they were measures determined by the court, pursuant to Article 7(2)(a) and (b)(i), to be ones that (whether on their own or with any other special measures) would be likely to maximise, so far as practicable, the quality of his evidence.

(3) The primary rule in the case of a child witness is that the court must give a special measures direction in relation to the witness which complies with the following requirements—

- (a) it must provide for any relevant recording to be admitted under Article 15 (video recorded evidence in chief); and
- (b) it must provide for any evidence given by the witness in the proceedings which is not given by means of a video recording (whether in chief or otherwise) to be given by means of a live link in accordance with Article 12.

(4) The primary rule is subject to the following limitations—

- (a) the requirement contained in paragraph (3)(a) or (b) has effect subject to the availability (within the meaning of Article 6(2)) of the special measure in question in relation to the witness;
- (b) the requirement contained in paragraph (3)(a) also has effect subject to Article 15(2); <sup>F3</sup> . . .

**Changes to legislation:** *The Criminal Evidence (Northern Ireland) Order 1999, Section 9 is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- [<sup>F4</sup>(ba) if the witness informs the court of the witness's wish that the rule should not apply or should apply only in part, the rule does not apply to the extent that the court is satisfied that not complying with the rule would not diminish the quality of the witness's evidence; and]
- (c) the rule does not apply to the extent that the court is satisfied that compliance with it would not be likely to maximise the quality of the witness's evidence so far as practicable (whether because the application to that evidence of one or more other special measures available in relation to the witness would have that result or for any other reason).

[<sup>F5</sup>(4A) Where as a consequence of all or part of the primary rule being disapplied under paragraph (4)(ba) a witness's evidence or any part of it would fall to be given as testimony in court, the court must give a special measures direction making such provision as is described in Article 11 for the evidence or that part of it.

(4B) The requirement in paragraph (4A) is subject to the following limitations—

- (a) if the witness informs the court of the witness's wish that the requirement in paragraph (4A) should not apply, the requirement does not apply to the extent that the court is satisfied that not complying with it would not diminish the quality of the witness's evidence; and
- (b) the requirement does not apply to the extent that the court is satisfied that making such a provision would not be likely to maximise the quality of the witness's evidence so far as practicable (whether because the application to that evidence of one or more other special measures available in relation to the witness would have that result or for any other reason).

(4C) In making a decision under paragraph (4)(ba) or (4B)(a), the court must take into account the following factors (and any others it considers relevant)—

- (a) the age and maturity of the witness;
- (b) the ability of the witness to understand the consequences of giving evidence otherwise than in accordance with the requirements in paragraph (3) or (as the case may be) in accordance with the requirement in paragraph (4A);
- (c) the relationship (if any) between the witness and the accused;
- (d) the witness's social and cultural background and ethnic origins;
- (e) the nature and alleged circumstances of the offence to which the proceedings relate.]

(5) <sup>F6</sup> .....

(6) <sup>F6</sup> .....

(7) <sup>F6</sup> .....

(8) Where a special measures direction is given in relation to a child witness who is an eligible witness by reason only of Article 4(1)(a), then—

- (a) subject to paragraph (9), and
- (b) except where the witness has already begun to give evidence in the proceedings,

the direction shall cease to have effect at the time when the witness attains the age of [<sup>F7</sup>18].

(9) Where a special measures direction is given in relation to a child witness who is an eligible witness by reason only of Article 4(1)(a) and—

- (a) the direction provides—
  - (i) for any relevant recording to be admitted under Article 15 as evidence in chief of the witness, or
  - (ii) for the special measure available under Article 16 to apply in relation to the witness, and

(b) if it provides for that special measure to so apply, the witness is still under the age of [F818] when the video recording is made for the purposes of Article 16,

then, so far as it provides as mentioned in sub-paragraph (a)(i) or (ii), the direction shall continue to have effect in accordance with Article 8(1) even though the witness subsequently attains that age.

- F1** Art. 9(1)(b) repealed (1.1.2012) by Justice Act (Northern Ireland) 2011 (c. 24), ss. 8(2), 110(2), 111(3), **Sch. 8 Pt. 1** (with s. 106(4), Sch. 6 para. 2); S.R. 2011/370, **art. 3(a)(g)(i)**
- F2** Word in art. 9(2)(a) substituted (1.1.2012) by Justice Act (Northern Ireland) 2011 (c. 24), **ss. 8(3)**, 111(3) (with s. 106(4), Sch. 6 para. 2); S.R. 2011/370, **art. 3(a)**
- F3** Word in art. 9(4)(b) repealed (1.1.2012) by Justice Act (Northern Ireland) 2011 (c. 24), ss. 8(4)(a), 110(2), 111(3), **Sch. 8 Pt. 1** (with s. 106(4), Sch. 6 para. 2); S.R. 2011/370, **art. 3(a)(g)(i)**
- F4** Art. 9(4)(ba) inserted (1.1.2012) by Justice Act (Northern Ireland) 2011 (c. 24), **ss. 8(4)(b)**, 111(3) (with s. 106(4), Sch. 6 para. 2); S.R. 2011/370, **art. 3(a)**
- F5** Art. 9(4A)-(4C) inserted (1.1.2012) by Justice Act (Northern Ireland) 2011 (c. 24), **ss. 8(5)**, 111(3) (with s. 106(4), Sch. 6 para. 2); S.R. 2011/370, **art. 3(a)**
- F6** Art. 9(5)-(7) repealed (1.1.2012) by Justice Act (Northern Ireland) 2011 (c. 24), ss. 8(6), 110(2), 111(3), **Sch. 8 Pt. 1** (with s. 106(4), Sch. 6 para. 2); S.R. 2011/370, **art. 3(a)(g)(i)**
- F7** Word in art. 9(8) substituted (1.1.2012) by Justice Act (Northern Ireland) 2011 (c. 24), **ss. 7(3)(a)**, 111(3) (with s. 106(4), Sch. 6 para. 2); S.R. 2011/370, **art. 3(a)**
- F8** Word in art. 9(9)(b) substituted (1.1.2012) by Justice Act (Northern Ireland) 2011 (c. 24), **ss. 7(3)(b)**, 111(3) (with s. 106(4), Sch. 6 para. 2); S.R. 2011/370, **art. 3(a)**

**Changes to legislation:**

The Criminal Evidence (Northern Ireland) Order 1999, Section 9 is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- art. 29(3)(aa) inserted by [2015 c. 9 \(N.I.\) Sch. 2 para. 11](#)
- art. 29(3)(aa) words substituted in earlier affecting provision [2015 c. 9 \(N.I.\), Sch. 2 para. 11](#) by [2022 c. 4 \(N.I.\) s. 4\(9\)\(h\)](#)