
STATUTORY INSTRUMENTS

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 measures direction relating to eligible witness

- 7.—(1) This Article applies where in any criminal proceedings—
- (a) a party to the proceedings makes an application for the court to give a direction under this Article in relation to a witness in the proceedings other than the accused, or
 - (b) the court of its own motion raises the issue whether such a direction should be given.
- (2) Where the court determines that the witness is eligible for assistance by virtue of Article 4 or 5, the court must then—
- (a) determine whether any of the special measures available in relation to the witness (or any combination of them) would, in its opinion, be likely to improve the quality of evidence given by the witness; and
 - (b) if so—
 - (i) determine which of those measures (or combination of them) would, in its opinion, be likely to maximise so far as practicable the quality of such evidence; and
 - (ii) give a direction under this Article providing for the measure or measures so determined to apply to evidence given by the witness.
- (3) In determining for the purposes of this Part whether any special measure or measures would or would not be likely to improve, or to maximise so far as practicable, the quality of evidence given by the witness, the court must consider all the circumstances of the case, including in particular—
- (a) any views expressed by the witness; and
 - (b) whether the measure or measures might tend to inhibit such evidence being effectively tested by a party to the proceedings.
- (4) A special measures direction must specify particulars of the provision made by the direction in respect of each special measure which is to apply to the witness's evidence.
- (5) In this Part “special measures direction” means a direction under this Article.
- (6) Nothing in this Part is to be regarded as affecting any power of a court to make an order or give leave of any description (in the exercise of its inherent jurisdiction or otherwise)—
- (a) in relation to a witness who is not an eligible witness, or

- (b) in relation to an eligible witness where (as, for example, in a case where a foreign language interpreter is to be provided) the order is made or the leave is given otherwise than by reason of the fact that the witness is an eligible witness.

Further provisions about directions: general

8.—(1) Subject to paragraph (2) and Article 9(8), a special measures direction has binding effect from the time it is made until the proceedings for the purposes of which it is made are either—

- (a) determined (by acquittal, conviction or otherwise), or
- (b) abandoned,

in relation to the accused or (if there is more than one) in relation to each of the accused.

(2) The court may discharge or vary (or further vary) a special measures direction if it appears to the court to be in the interests of justice to do so, and may do so either—

- (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) of its own motion.

(3) In paragraph (2) “the relevant time” means—

- (a) the time when the direction was given, or
- (b) if a previous application has been made under that paragraph, the time when the application (or last application) was made.

(4) Nothing in Article 12(2) and (3), 15(4) to (7) or 16(4) to (6) is to be regarded as affecting the power of the court to vary or discharge a special measures direction under paragraph (2).

(5) The court must state in open court its reasons for—

- (a) giving or varying,
- (b) refusing an application for, or for the variation or discharge of, or
- (c) discharging,

a special measures direction and, if it is a magistrates' court, must cause them to be entered in the Order Book.

(6) Rules of court may make provision—

- (a) for uncontested applications to be determined by the court without a hearing;
- (b) for preventing the renewal of an unsuccessful application for a special measures direction except where there has been a material change of circumstances;
- (c) for expert evidence to be given in connection with an application for, or for varying or discharging, such a direction;
- (d) for the manner in which confidential or sensitive information is to be treated in connection with such an application and in particular as to its being disclosed to, or withheld from, a party to the proceedings.

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) a child witness is “in need of special protection” if the offence (or any of the offences) to which the proceedings relate is—

- (i) an offence falling within Article 23(3)(a) (sexual offences), or
- (ii) an offence falling within Article 23(3)(b), (c) or (d) (kidnapping, assaults etc.); and
- (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 (7); 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); 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).

(5) However, paragraph (4)(c) does not apply in relation to a child witness in need of special protection.

(6) Where a child witness is in need of special protection by virtue of paragraph (1)(b)(i), any special measures direction given by the court which complies with the requirement contained in paragraph (3)(a) must in addition provide for the special measure available under Article 16 (video recorded cross-examination or re-examination) to apply in relation to—

- (a) any cross-examination of the witness otherwise than by the accused in person, and
- (b) any subsequent re-examination.

(7) The requirement contained in paragraph (6) has effect subject to the following limitations—

- (a) it has effect subject to the availability (within the meaning of Article 6(2)) of that special measure in relation to the witness; and
- (b) it does not apply if the witness has informed the court that he does not want that special measure to apply in relation to him.

(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 17.

(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 17 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.

Extension of provisions of Article 9 to certain witnesses over 17

10.—(1) For the purposes of this Article—

(a) a witness in criminal proceedings (other than the accused) is a “qualifying witness” if he—

(i) is not an eligible witness at the time of the hearing (as defined by Article 4(3)), but

(ii) was under the age of 17 when a relevant recording was made;

(b) a qualifying witness is “in need of special protection” if the offence (or any of the offences) to which the proceedings relate is—

(i) an offence falling within Article 23(3)(a) (sexual offences), or

(ii) an offence falling within Article 23(3)(b), (c) or (d) (kidnapping, assaults etc.); and

(c) a “relevant recording”, in relation to a 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) Paragraphs (2) to (7) of Article 9 shall apply as follows in relation to a qualifying witness—

(a) paragraphs (2) to (4), so far as relating to the giving of a direction complying with the requirement contained in paragraph (3)(a), shall apply to a qualifying witness in respect of the relevant recording as they apply to a child witness (within the meaning of that Article);

(b) paragraph (5), so far as relating to the giving of such a direction, shall apply to a qualifying witness in need of special protection as it applies to a child witness in need of special protection (within the meaning of that Article); and

(c) paragraphs (6) and (7) shall apply to a qualifying witness in need of special protection by virtue of paragraph (1)(b)(i) as they apply to such a child witness as is mentioned in paragraph (6).