

These notes refer to the Youth Justice and Criminal Evidence Act 1999 (c.23) which received Royal Assent on 27 July 1999

YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part II: Giving of evidence or information for purposes of criminal proceedings

Chapter V: Competence of witnesses and capacity to be sworn

Section 55: Determining whether witnesses are to be sworn

191. This section sets out how courts are to decide whether a witness should swear an oath to tell the truth before giving evidence. Here, as in other legislation, references to swearing an oath include making an affirmation. *Subsection (1)* provides that the question of whether a witness is eligible to swear an oath may be raised by either party to the proceedings - i.e. prosecution or defence - or by the court itself. The procedure used to determine this question will be the same as the procedure outlined above for determining competence.
192. *Subsection (2)(a)* provides that no witness under the age of 14 is to be sworn. A witness of 14 or over is only eligible to be sworn if he understands the solemnity of a criminal trial and that taking an oath places a particular responsibility on him to tell the truth. If no evidence is offered suggesting that the witness does not understand those two matters, *subsection (3)* sets up a presumption that the witness is to be sworn if he is 14 or over.
193. *Subsections (5) – (7)* provide that, as with considerations of competence, the question of whether a witness should be sworn is to be considered in the absence of any jury (but in the presence of both the prosecution and the defence) and that expert evidence can be received on this subject.