



Coroners and Justice Act 2009

2009 CHAPTER 25

PART 3

CRIMINAL EVIDENCE, INVESTIGATIONS AND PROCEDURE

CHAPTER 3

VULNERABLE AND INTIMIDATED WITNESSES

Special measures for vulnerable and intimidated witnesses

98 Eligibility for special measures: age of child witnesses

- (1) The [Youth Justice and Criminal Evidence Act 1999 \(c. 23\)](#) is amended as follows.
- (2) In section 16(1)(a) (witnesses eligible because under 17), for “17” substitute “18”.
- (3) In section 21 (special provisions relating to child witnesses)—
 - (a) in subsection (8), for “17” substitute “18”, and
 - (b) in subsection (9)(b), for “17” substitute “18”.
- (4) In section 22 (extension of section 21 to certain witnesses)—
 - (a) in the title, for “17” substitute “18”, and
 - (b) in subsection (1)(a)(ii), for “17” substitute “18”.

99 Eligibility for special measures: offences involving weapons

- (1) The [Youth Justice and Criminal Evidence Act 1999](#) is amended as follows.
- (2) In section 17 (witnesses eligible for assistance on grounds of fear or distress about testifying), after subsection (4) add—

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- “(5) A witness in proceedings relating to a relevant offence (or to a relevant offence and any other offences) is eligible for assistance in relation to those proceedings by virtue of this subsection unless the witness has informed the court of the witness’s wish not to be so eligible by virtue of this subsection.
- (6) For the purposes of subsection (5) an offence is a relevant offence if it is an offence described in Schedule 1A.
- (7) The Secretary of State may by order amend Schedule 1A.”
- (3) In section 64(3) (orders subject to affirmative resolution procedure), in paragraph (a) after “section” insert “17(7),”.
- (4) Before Schedule 2 insert the Schedule 1A set out in Schedule 14 to this Act.

100 Special measures directions for child witnesses

- (1) Section 21 of the [Youth Justice and Criminal Evidence Act 1999 \(c. 23\)](#) (special provisions relating to child witnesses) is amended in accordance with subsections (2) to (7).
- (2) In subsection (1) (definitions), omit paragraph (b) (child witnesses in need of special protection) (but not the “and” following it).
- (3) In subsection (2) (determining contents of direction), for “(7)” substitute “(4C)”.
- (4) In subsection (4) (limitations on primary rule)—
 - (a) omit the “and” at the end of paragraph (b), and
 - (b) after paragraph (b) insert—
 - “(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”.
- (5) After subsection (4) insert—
 - “(4A) Where as a consequence of all or part of the primary rule being disapplied under subsection (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 section 23 for the evidence or that part of it.
 - (4B) The requirement in subsection (4A) is subject to the following limitations—
 - (a) if the witness informs the court of the witness’s wish that the requirement in subsection (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

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measures available in relation to the witness would have that result or for any other reason).”

(6) After subsection (4B) (inserted by subsection (5)) insert—

“(4C) In making a decision under subsection (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 subsection (3) or (as the case may be) in accordance with the requirement in subsection (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.”

(7) Omit subsections (5) to (7).

(8) In section 22 of that Act (extension of provisions of section 21)—

- (a) in subsection (1), omit paragraph (b) (but not the “and” following it), and
- (b) for subsection (2) substitute—

“(2) Subsections (2) to (4) and (4C) of section 21, so far as relating to the giving of a direction complying with the requirement contained in section 21(3)(a), apply to a qualifying witness in respect of the relevant recording as they apply to a child witness (within the meaning of that section).”

101 Special provisions relating to sexual offences

After section 22 of the [Youth Justice and Criminal Evidence Act 1999 \(c. 23\)](#) insert—

“22A Special provisions relating to sexual offences

- (1) This section applies where in criminal proceedings relating to a sexual offence (or to a sexual offence and other offences) the complainant in respect of that offence is a witness in the proceedings.
- (2) This section does not apply if the place of trial is a magistrates’ court.
- (3) This section does not apply if the complainant is an eligible witness by reason of section 16(1)(a) (whether or not the complainant is an eligible witness by reason of any other provision of section 16 or 17).
- (4) If a party to the proceedings makes an application under section 19(1)(a) for a special measures direction in relation to the complainant, the party may request that the direction provide for any relevant recording to be admitted under section 27 (video recorded evidence in chief).
- (5) Subsection (6) applies if—
 - (a) a party to the proceedings makes a request under subsection (4) with respect to the complainant, and

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- (b) the court determines for the purposes of section 19(2) that the complainant is eligible for assistance by virtue of section 16(1)(b) or 17.
- (6) The court must—
- (a) first have regard to subsections (7) to (9); and
 - (b) then have regard to section 19(2);
- and for the purposes of section 19(2), as it then applies to the complainant, any special measure required to be applied in relation to the complainant by virtue of this section is to be treated as if it were a measure determined by the court, pursuant to section 19(2)(a) and (b)(i), to be one that (whether on its own or with any other special measures) would be likely to maximise, so far as practicable, the quality of the complainant’s evidence.
- (7) The court must give a special measures direction in relation to the complainant that provides for any relevant recording to be admitted under section 27.
- (8) The requirement in subsection (7) has effect subject to section 27(2).
- (9) The requirement in subsection (7) 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 complainant’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 complainant would have that result or for any other reason).
- (10) In this section “relevant recording”, in relation to a complainant, is a video recording of an interview of the complainant made with a view to its admission as the evidence in chief of the complainant.”

102 Evidence by live link: presence of supporter

- (1) In section 24 of the [Youth Justice and Criminal Evidence Act 1999 \(c. 23\)](#) (evidence by live link), after subsection (1) insert—
- “(1A) Such a direction may also provide for a specified person to accompany the witness while the witness is giving evidence by live link.
- (1B) In determining who may accompany the witness, the court must have regard to the wishes of the witness.”
- (2) In section 27 of that Act (video recorded evidence in chief), after subsection (9) insert—
- “(9A) If the court directs under subsection (9) that evidence is to be given by live link, it may also make such provision in that direction as it could make under section 24(1A) in a special measures direction.”

103 Video recorded evidence in chief: supplementary testimony

- (1) Section 27 of the [Youth Justice and Criminal Evidence Act 1999](#) (video recorded evidence in chief) is amended as follows.
- (2) In subsection (5) (consequences of admitting video recording), for paragraph (b) substitute—

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- “(b) the witness may not without the permission of the court give evidence in chief otherwise than by means of the recording as to any matter which, in the opinion of the court, is dealt with in the witness’s recorded testimony.”
- (3) In subsection (7) (giving permission for additional testimony)—
- (a) for “subsection (5)(b)(ii)” substitute “subsection (5)(b)”, and
 - (b) in paragraph (a) (requirement of a material change of circumstances since the relevant time), omit from “if there” to “relevant time,”.
- (4) Omit subsection (8) (definition of “the relevant time”).
- (5) In subsection (9) (supplementary testimony by live link), for “subsection (5)(b)(ii)” substitute “subsection (5)(b)”.

Evidence of certain accused persons

104 Examination of accused through intermediary

- (1) After section 33B of the [Youth Justice and Criminal Evidence Act 1999 \(c. 23\)](#) insert—

“33BA Examination of accused through intermediary

- (1) This section applies to any proceedings (whether in a magistrates’ court or before the Crown Court) against a person for an offence.
- (2) The court may, on the application of the accused, give a direction under subsection (3) if it is satisfied—
- (a) that the condition in subsection (5) is or, as the case may be, the conditions in subsection (6) are met in relation to the accused, and
 - (b) that making the direction is necessary in order to ensure that the accused receives a fair trial.
- (3) A direction under this subsection is a direction that provides for any examination of the accused to be conducted through an interpreter or other person approved by the court for the purposes of this section (“an intermediary”).
- (4) The function of an intermediary is to communicate—
- (a) to the accused, questions put to the accused, and
 - (b) to any person asking such questions, the answers given by the accused in reply to them,
- and to explain such questions or answers so far as necessary to enable them to be understood by the accused or the person in question.
- (5) Where the accused is aged under 18 when the application is made the condition is that the accused’s ability to participate effectively in the proceedings as a witness giving oral evidence in court is compromised by the accused’s level of intellectual ability or social functioning.
- (6) Where the accused has attained the age of 18 when the application is made the conditions are that—

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- (a) the accused suffers from a mental disorder (within the meaning of the Mental Health Act 1983) or otherwise has a significant impairment of intelligence and social function, and
 - (b) the accused is for that reason unable to participate effectively in the proceedings as a witness giving oral evidence in court.
- (7) Any examination of the accused in pursuance of a direction under subsection (3) must take place in the presence of such persons as Criminal Procedure Rules or the direction may provide and in circumstances in which—
- (a) the judge or justices (or both) and legal representatives acting in the proceedings are able to see and hear the examination of the accused and to communicate with the intermediary,
 - (b) the jury (if there is one) are able to see and hear the examination of the accused, and
 - (c) where there are two or more accused in the proceedings, each of the other accused is able to see and hear the examination of the accused.
- For the purposes of this subsection any impairment of eyesight or hearing is to be disregarded.
- (8) Where two or more legal representatives are acting for a party to the proceedings, subsection (7)(a) is to be regarded as satisfied in relation to those representatives if at all material times it is satisfied in relation to at least one of them.
- (9) A person may not act as an intermediary in a particular case except after making a declaration, in such form as may be prescribed by Criminal Procedure Rules, that the person will faithfully perform the function of an intermediary.
- (10) Section 1 of the Perjury Act 1911 (perjury) applies in relation to a person acting as an intermediary as it applies in relation to a person lawfully sworn as an interpreter in a judicial proceeding.

33BB Further provision as to directions under section 33BA(3)

- (1) The court may discharge a direction given under section 33BA(3) at any time before or during the proceedings to which it applies if it appears to the court that the direction is no longer necessary in order to ensure that the accused receives a fair trial (but this does not affect the power to give a further direction under section 33BA(3) in relation to the accused).
- (2) The court may vary (or further vary) a direction given under section 33BA(3) at any time before or during the proceedings to which it applies if it appears to the court that it is necessary for the direction to be varied in order to ensure that the accused receives a fair trial.
- (3) The court may exercise the power in subsection (1) or (2) of its own motion or on an application by a party.
- (4) The court must state in open court its reasons for—
 - (a) giving, varying or discharging a direction under section 33BA(3), or
 - (b) refusing an application for, or for the variation or discharge of, a direction under section 33BA(3),

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and, if it is a magistrates' court, it must cause those reasons to be entered in the register of its proceedings.”

- (2) In the heading of Chapter 1A of Part 2 of that Act, after “LIVE LINK” insert “AND INTERMEDIARY”.

Witnesses protected from cross-examination by accused in person

105 Age of child complainant

In section 35 of the [Youth Justice and Criminal Evidence Act 1999 \(c. 23\)](#) (child complainants and other child witnesses), in subsection (4)(a) for “17” substitute “18”.