



## 2011 CHAPTER 24

### PART 1

#### VICTIMS AND WITNESSES

##### CHAPTER 2

##### VULNERABLE AND INTIMIDATED WITNESSES

##### *Special measures for vulnerable and intimidated witnesses*

##### **Eligibility for special measures: age of child witnesses**

7.—(1) The [Criminal Evidence \(Northern Ireland\) Order 1999 \(NI 8\)](#) is amended as follows.

(2) In Article 4(1)(a) (witnesses eligible because under 17) for “17” substitute “18”.

(3) In Article 9 (special provisions relating to child witnesses)—

(a) in paragraph (8) for “17” substitute “18”, and

(b) in paragraph (9)(b) for “17” substitute “18”.

(4) In Article 10 (extension of Article 9 to certain witnesses)—

(a) in the title for “17” substitute “18”, and

(b) in paragraph (1)(a)(ii) for “17” substitute “18”.

##### **Special measures directions for child witnesses**

8.—(1) Article 9 of the [Criminal Evidence \(Northern Ireland\) Order 1999 \(NI 8\)](#) (special provisions relating to child witnesses) is amended in accordance with subsections (2) to (6).

- (2) In paragraph (1) omit sub-paragraph (b).
- (3) In paragraph (2)(a) for “(7)” substitute “(4C)”.
- (4) In paragraph (4)—
  - (a) omit the “and” at the end of sub-paragraph (b), and
  - (b) after sub-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 paragraph (4) insert—
  - “(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.”.
- (6) Omit paragraphs (5) to (7).
- (7) In Article 10 of that Order (extension of provisions of Article 9)—
  - (a) in paragraph (1) omit sub-paragraph (b), and
  - (b) for paragraph (2) substitute—

“(2) Paragraphs (2) to (4) and (4C) of Article 9, so far as relating to the giving of a direction complying with the requirement contained in Article 9(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 Article).”.

### **Special provisions relating to sexual offences**

9. After Article 10 of the [Criminal Evidence \(Northern Ireland\) Order 1999 \(NI 8\)](#) insert—

#### **“Special provisions relating to sexual offences**

**10A.**—(1) This Article 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 Article does not apply if the place of trial is a magistrates’ court.

(3) This Article does not apply if the complainant is an eligible witness by reason of Article 4(1)(a) (whether or not the complainant is an eligible witness by reason of any other provision of Article 4 or 5).

(4) If a party to the proceedings makes an application under Article 7(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 Article 15 (video recorded evidence in chief).

(5) Paragraph (6) applies if—

- (a) a party to the proceedings makes a request under paragraph (4) with respect to the complainant; and
- (b) the court determines for the purposes of Article 7(2) that the complainant is eligible for assistance by virtue of Article 4(1)(b) or 5.

(6) The court must—

- (a) first have regard to paragraphs (7) to (9); and
- (b) then have regard to Article 7(2);

and for the purposes of Article 7(2), as it then applies to the complainant, any special measure required to be applied in relation to the complainant by virtue of this Article is to be treated as if it were a measure determined by the court, pursuant to Article 7(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 Article 15.

(8) The requirement in paragraph (7) has effect subject to Article 15(2).

(9) The requirement in paragraph (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 Article "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."

### **Evidence by live link: presence of supporter**

**10.**—(1) In Article 12 of the [Criminal Evidence \(Northern Ireland\) Order 1999 \(NI 8\)](#) (evidence by live link) after paragraph (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 Article 15 of that Order (video recorded evidence in chief) after paragraph (9) insert—

“(9A) If the court directs under paragraph (9) that evidence is to be given by live link, it may also make such provision in that direction as it could make under Article 12(1A) in a special measures direction.”.

### **Video-recorded evidence in chief: supplementary testimony**

**11.**—(1) Article 15 of the Criminal Evidence (Northern Ireland) Order 1999 (video recorded evidence in chief) is amended as follows.

(2) In paragraph (5) for sub-paragraph (b) substitute—

“(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 paragraph (7)—

(a) for “paragraph (5)(b)(ii)” substitute “paragraph (5)(b)”, and

(b) in sub-paragraph (a) omit the words from “if there” to “relevant time,”.

(4) Omit paragraph (8) (definition of “the relevant time”).

(5) In paragraph (9) for “paragraph (5)(b)(ii)” substitute “paragraph (5)(b)”.