

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 I: Special Measures directions in case of vulnerable or intimidated witnesses

Section 28: Video recorded cross-examination or re-examination

118. This section provides that, where the court has already allowed a video recording to be admitted as the witness's main evidence, the witness may be cross-examined before trial, and the cross-examination, and any re-examination, recorded on video for use at trial.
119. The cross-examination would not be recorded in the physical presence of the defendant, although he would have to be able to see and hear the cross-examination and be able to communicate with his legal representative. This could be achieved through a live link, for example.
120. The video-recorded cross-examination may, but need not, take place in the physical presence of the judge or magistrates and the defence and prosecution legal representatives. However, a judge or magistrate will have to be able to control the proceedings. It is intended that the judge or magistrate in charge of this procedure would normally be the trial judge. All the people mentioned in this paragraph will have to be able to see and hear the witness being cross-examined and communicate with anyone who is in the room with the witness (such as an intermediary).
121. As with video-recorded evidence in chief, a video recording of cross-examination may afterwards be excluded if any rules of court governing the cross-examination have not been complied with (*subsection (4)*).
122. *Subsections (5) and (6)* provide that witnesses who have been cross-examined on video are not to be cross-examined again unless the court makes a direction permitting another video-recorded cross-examination. It will only do so if the subject of the proposed cross-examination is relevant to the trial and something which the party seeking to cross-examine did not know about at the time of the original cross-examination (and could not have reasonably found out about by then) or if it is otherwise in the interests of justice to do so. Information that has not yet been disclosed to the cross-examining party is intended to count as information that the party could not reasonably have found out about.