

# YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999

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## 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 21: Special provisions relating to young witnesses***

97. This section imposes special obligations on courts when they deal with witnesses under the age of 17.
98. It creates three groups of child witnesses:
  - children giving evidence in a sexual offence case (as defined in section 35)
  - children giving evidence in a case involving an offence of violence, abduction or neglect, and
  - children giving evidence in all other cases.
99. The first two groups are described as being in need of “special protection”, and each group will benefit from strong presumptions about how they will give evidence. Children in sexual offence cases will receive a particularly high level of protection. *Subsections (2) to (8)* set out how each category of witness will give their evidence.
100. Most child witnesses – those giving evidence in cases that do not involve offences of sex, violence, cruelty or abduction – will have a video recording admitted as their evidence-in-chief and will give any further evidence, or cross-examination, through a live link at trial. A presumption to this effect will apply unless giving evidence in this way would not improve the quality of the child’s evidence.
101. For witnesses in need of special protection, courts will not have to consider whether special measures will improve the quality of their evidence. That requirement is, in effect, treated as being satisfied.
102. All witnesses in need of special protection will have a video recording of their evidence-in-chief admitted. (The only possible exception would be if the court exercised its power under clause 27(2) to exclude a recording if it would not be in the interests of justice to be admit it.) Witnesses who are giving evidence in sexual offence cases will go on to be cross-examined at a pre-trial hearing which will be recorded on video, unless they inform the court that they do not want this measure to apply to them. Those giving evidence in violent offence cases will give further evidence through live link at trial.
103. *Subsection (8)* provides that, if a court makes a special measures direction in respect of a child witness who was eligible for special measures on grounds of youth only, and

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

the witness turns 17 before beginning to give evidence, the direction will no longer have effect. But if such a witness turns 17 after beginning to give evidence, the special measures provided for him will continue to apply. The intention is to reduce confusion for the witness and the court.

104. *Subsection (9)* provides that if a witness gave video-recorded evidence in chief or was cross-examined on video before the trial when he was under 17, but since turned 17, the video recording will still be admissible as evidence.