



# Youth Justice and Criminal Evidence Act 1999

## 1999 CHAPTER 23

### PART II

#### GIVING OF EVIDENCE OR INFORMATION FOR PURPOSES OF CRIMINAL PROCEEDINGS

#### CHAPTER I

#### SPECIAL MEASURES DIRECTIONS IN CASE OF VULNERABLE AND INTIMIDATED WITNESSES

#### *Special measures directions*

#### **21 Special provisions relating to child witnesses.**

(1) For the purposes of this section—

(a) a witness in criminal proceedings is a “child witness” if he is an eligible witness by reason of section 16(1)(a) (whether or not he is an eligible witness by reason of any other provision of section 16 or 17);

<sup>F1</sup>(b) ..... and

(c) a “relevant recording”, in relation to a child witness, is a video recording of an interview of the witness made with a view to its admission as evidence in chief of the witness.

(2) Where the court, in making a determination for the purposes of section 19(2), determines that a witness in criminal proceedings is a child witness, the court must—

(a) first have regard to subsections (3) to [<sup>F2</sup>(4C)] below; and

(b) then have regard to section 19(2);

and for the purposes of section 19(2), as it then applies to the witness, any special measures required to be applied in relation to him by virtue of this section shall be treated as if they were measures determined by the court, pursuant to section 19(2)(a)

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and (b)(i), to be ones that (whether on their own or with any other special measures) would be likely to maximise, so far as practicable, the quality of his evidence.

(3) The primary rule in the case of a child witness is that the court must give a special measures direction in relation to the witness which complies with the following requirements—

- (a) it must provide for any relevant recording to be admitted under section 27 (video recorded evidence in chief); and
- (b) it must provide for any evidence given by the witness in the proceedings which is not given by means of a video recording (whether in chief or otherwise) to be given by means of a live link in accordance with section 24.

(4) The primary rule is subject to the following limitations—

- (a) the requirement contained in subsection (3)(a) or (b) has effect subject to the availability (within the meaning of section 18(2)) of the special measure in question in relation to the witness;
- (b) the requirement contained in subsection (3)(a) also has effect subject to section 27(2); <sup>F3</sup>...

[<sup>F4</sup>(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]

- (c) the rule 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 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).

[<sup>F5</sup>(4A) Where as a consequence of all or part of the primary rule being disappplied 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 measures available in relation to the witness would have that result or for any other reason).]

[<sup>F6</sup>(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;

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(e) the nature and alleged circumstances of the offence to which the proceedings relate.]

<sup>F7</sup>(5) .....

<sup>F7</sup>(6) .....

<sup>F7</sup>(7) .....

(8) Where a special measures direction is given in relation to a child witness who is an eligible witness by reason only of section 16(1)(a), then—

(a) subject to subsection (9) below, and

(b) except where the witness has already begun to give evidence in the proceedings,

the direction shall cease to have effect at the time when the witness attains the age of [<sup>F8</sup>18].

(9) Where a special measures direction is given in relation to a child witness who is an eligible witness by reason only of section 16(1)(a) and—

(a) the direction provides—

(i) for any relevant recording to be admitted under section 27 as evidence in chief of the witness, or

(ii) for the special measure available under section 28 to apply in relation to the witness, and

(b) if it provides for that special measure to so apply, the witness is still under the age of [<sup>F9</sup>18] when the video recording is made for the purposes of section 28, then, so far as it provides as mentioned in paragraph (a)(i) or (ii) above, the direction shall continue to have effect in accordance with section 20(1) even though the witness subsequently attains that age.

**Textual Amendments**

**F1** S. 21(1)(b) repealed (27.6.2011) by Coroners and Justice Act 2009 (c. 25), ss. 100(2), 182(5), **Sch. 23 Pt. 3** (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)(i)

**F2** Word in s. 21(2) substituted (27.6.2011) by Coroners and Justice Act 2009 (c. 25), **ss. 100(3), 182(5)** (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)

**F3** Word in s. 21(4)(b) repealed (27.6.2011) by Coroners and Justice Act 2009 (c. 25), ss. 100(4)(a), 182(5), **Sch. 23 Pt. 3** (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)(i)

**F4** S. 21(4)(ba) inserted (27.6.2011) by Coroners and Justice Act 2009 (c. 25), **ss. 100(4)(b), 182(5)** (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)

**F5** S. 21(4A)(4B) inserted (27.6.2011) by Coroners and Justice Act 2009 (c. 25), **ss. 100(5), 182(5)** (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)

**F6** S. 21(4C) inserted (27.6.2011) by Coroners and Justice Act 2009 (c. 25), **ss. 100(6), 182(5)** (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)

**F7** S. 21(5)-(7) repealed (27.6.2011) by Coroners and Justice Act 2009 (c. 25), ss. 100(7), 182(5), **Sch. 23 Pt. 3** (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)(i)

**F8** Word in s. 21(8) substituted (27.6.2011) by Coroners and Justice Act 2009 (c. 25), **ss. 98(3)(a), 182(5)** (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)

**F9** Word in s. 21(9)(b) substituted (27.6.2011) by Coroners and Justice Act 2009 (c. 25), **ss. 98(3)(b), 182(5)** (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)

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**Modifications etc. (not altering text)**

- C1** S. 21 applied (with modifications) (31.10.2009) by [The Youth Justice and Criminal Evidence Act 1999 \(Application to Service Courts\) Order 2009 \(S.I. 2009/2083\)](#), arts. 1, 3, 4

**Commencement Information**

- II** S. 21 wholly in force at 24.7.2002; Pt. II Chs. 1-4 (ss. 16-52) in force for certain purposes at Royal Assent, see s. 68(4); s. 20 in force in so far as not already in force at 24.7.2002 by [S.I. 2002/1739](#), **art. 2(a)**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 33BA33BB inserted by [2009 c. 25 s. 104\(1\)](#)