



2011 CHAPTER 24

PART 1

VICTIMS AND WITNESSES

CHAPTER 2

VULNERABLE AND INTIMIDATED WITNESSES

Special measures for vulnerable and intimidated witnesses

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—

Status: Point in time view as at 01/01/2012.

Changes to legislation: There are currently no known outstanding effects for the Justice Act (Northern Ireland) 2011, Section 8. (See end of Document for details)

“(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).”.

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Commencement Information

II S. 8 in operation at 1.1.2012 by S.R. 2011/370, **art. 3(a)**

Status:

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There are currently no known outstanding effects for the Justice Act (Northern Ireland) 2011, Section 8.