



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

Preliminary

16 Witnesses eligible for assistance on grounds of age or incapacity.

- (1) For the purposes of this Chapter a witness in criminal proceedings (other than the accused) is eligible for assistance by virtue of this section—
 - (a) if under the age of [F¹18] at the time of the hearing; or
 - (b) if the court considers that the quality of evidence given by the witness is likely to be diminished by reason of any circumstances falling within subsection (2).
- (2) The circumstances falling within this subsection are—
 - (a) that the witness—
 - (i) suffers from mental disorder within the meaning of the ^{M1}Mental Health Act 1983, or
 - (ii) otherwise has a significant impairment of intelligence and social functioning;
 - (b) that the witness has a physical disability or is suffering from a physical disorder.

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- (3) In subsection (1)(a) “the time of the hearing”, in relation to a witness, means the time when it falls to the court to make a determination for the purposes of section 19(2) in relation to the witness.
- (4) In determining whether a witness falls within subsection (1)(b) the court must consider any views expressed by the witness.
- (5) In this Chapter references to the quality of a witness’s evidence are to its quality in terms of completeness, coherence and accuracy; and for this purpose “coherence” refers to a witness’s ability in giving evidence to give answers which address the questions put to the witness and can be understood both individually and collectively.

Textual Amendments

- F1** Word in s. 16(1)(a) substituted (27.6.2011) by [Coroners and Justice Act 2009 \(c. 25\)](#), **ss. 98(2)**, 182(5) (with s. 180, Sch. 22 para. 23); S.I. 2011/1452, art. 2(a)

Modifications etc. (not altering text)

- C1** S. 16 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

- I1** S. 16 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. 16 in force in so far as not already in force at 24.7.2002 by [S.I. 2002/1739](#), **art. 2(a)**

Marginal Citations

- M1** 1983 c. 20.

17 Witnesses eligible for assistance on grounds of fear or distress about testifying.

- (1) For the purposes of this Chapter a witness in criminal proceedings (other than the accused) is eligible for assistance by virtue of this subsection if the court is satisfied that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings.
- (2) In determining whether a witness falls within subsection (1) the court must take into account, in particular—
- (a) the nature and alleged circumstances of the offence to which the proceedings relate;
 - (b) the age of the witness;
 - (c) such of the following matters as appear to the court to be relevant, namely—
 - (i) the social and cultural background and ethnic origins of the witness,
 - (ii) the domestic and employment circumstances of the witness, and
 - (iii) any religious beliefs or political opinions of the witness;
 - (d) any behaviour towards the witness on the part of—
 - (i) the accused,
 - (ii) members of the family or associates of the accused, or

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- (iii) any other person who is likely to be an accused or a witness in the proceedings.
- (3) In determining that question the court must in addition consider any views expressed by the witness.
- (4) Where the complainant in respect of a sexual offence is a witness in proceedings relating to that offence (or to that offence and any other offences), the witness is eligible for assistance in relation to those proceedings by virtue of this subsection unless the witness has informed the court of the witness' wish not to be so eligible by virtue of this subsection.
- [^{F2}(5) A witness in proceedings relating to a relevant offence (or to a relevant offence and any other offences) is eligible for assistance in relation to those proceedings by virtue of this subsection unless the witness has informed the court of the witness's wish not to be so eligible by virtue of this subsection.
- (6) For the purposes of subsection (5) an offence is a relevant offence if it is an offence described in Schedule 1A.
- (7) The Secretary of State may by order amend Schedule 1A.]

Textual Amendments

- F2** S. 17(5)-(7) added (27.6.2011) by [Coroners and Justice Act 2009 \(c. 25\), ss. 99\(2\), 182\(5\)](#) (with [s. 180, Sch. 22 para. 23](#)); [S.I. 2011/1452, art. 2\(a\)](#)

Modifications etc. (not altering text)

- C2** S. 17 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

- I2** S. 17 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. 17 in force in so far as not already in force at 24.7.2002 by [S.I. 2002/1739, art. 2\(a\)](#)

18 Special measures available to eligible witnesses.

- (1) For the purposes of this Chapter—
- the provision which may be made by a special measures direction by virtue of each of sections 23 to 30 is a special measure available in relation to a witness eligible for assistance by virtue of section 16; and
 - the provision which may be made by such a direction by virtue of each of sections 23 to 28 is a special measure available in relation to a witness eligible for assistance by virtue of section 17;
- but this subsection has effect subject to subsection (2).
- (2) Where (apart from this subsection) a special measure would, in accordance with subsection (1)(a) or (b), be available in relation to a witness in any proceedings, it shall not be taken by a court to be available in relation to the witness unless—
- the court has been notified by the Secretary of State that relevant arrangements may be made available in the area in which it appears to the court that the proceedings will take place, and

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- (b) the notice has not been withdrawn.
- (3) In subsection (2) “relevant arrangements” means arrangements for implementing the measure in question which cover the witness and the proceedings in question.
- (4) The withdrawal of a notice under that subsection relating to a special measure shall not affect the availability of that measure in relation to a witness if a special measures direction providing for that measure to apply to the witness’s evidence has been made by the court before the notice is withdrawn.
- (5) The Secretary of State may by order make such amendments of this Chapter as he considers appropriate for altering the special measures which, in accordance with subsection (1)(a) or (b), are available in relation to a witness eligible for assistance by virtue of section 16 or (as the case may be) section 17, whether—
 - (a) by modifying the provisions relating to any measure for the time being available in relation to such a witness,
 - (b) by the addition—
 - (i) (with or without modifications) of any measure which is for the time being available in relation to a witness eligible for assistance by virtue of the other of those sections, or
 - (ii) of any new measure, or
 - (c) by the removal of any measure.

Modifications etc. (not altering text)

C3 S. 18 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

I3 S. 18 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. 18 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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