

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

Sections 16 and 17: Eligible witnesses

82. Witnesses other than the defendant (who already has the benefit of a number of procedural safeguards) will be eligible for special measures to help them with giving evidence in criminal proceedings if:
- they are under 17;
 - they suffer from a mental disorder, or have a mental impairment or learning disability (which could include autistic spectrum disorders) that the court considers significant enough to affect the quality of their evidence;
 - they have a physical disorder or disability (which could include deafness) that the court considers likely to affect the quality of their evidence; or
 - the court is satisfied that the witnesses are likely, because of their own circumstances and the circumstances relating to the case (section 17(2)), to suffer fear or distress in giving evidence to an extent that is expected to affect its quality.

It will be possible to make applications, and for courts to grant special measures, on more than one of these grounds.

83. A witness under the age of 17 will always be eligible for help (and section 21 provides for measures to continue when a witness turns 17 before the end of the trial). Otherwise, in deciding eligibility courts must consider witnesses' own views about their status. Complainants of sexual offences will be considered eligible unless they inform the court that they do not want to be eligible. "Complainant" is defined in section 63 of the Act as "a person against or in relation to whom the offence was (or is alleged to have been) committed" – in other words, the alleged victim.
84. It is intended that courts will authorise special measures (see section 19) if they take the view that a measure or combination of measures will be likely to improve the quality of a witness's evidence. Without the measures, the quality is likely to range:
- from being unintelligible (in that the witness would not meet the tests for competence and intelligibility given in section 53: "to understand questions put to him as a witness and give answers to them which can be understood")

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

- to being intelligible, but of a worse quality than it could be, because of the circumstances that make the witness eligible for help.

‘Quality’ means more than intelligibility (section 16(5)): it encompasses completeness, accuracy and being able to address the questions put and give answers which can be understood (both as separate answers and when taken together as a complete statement of the witness’s evidence).