

# **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 29: Examination of witness through intermediary***

123. This section allows witnesses to be questioned and to give evidence through an intermediary. An intermediary is someone whom the court approves to communicate to the witness the questions the court, the defence and the prosecution ask, and then communicate the answers the witness gives in reply. The intermediary will be allowed to explain questions and answers if that is necessary to enable the witness and the court to communicate.
124. The intermediary will normally be a specialist - through training or, perhaps, through unique knowledge of the witness – who can help a witness who has difficulty understanding questions or framing evidence coherently to communicate. An intermediary might, alternatively, have skills to overcome specific communication problems, such as those caused by deafness. Deaf witnesses will be able to choose to rely on existing administrative arrangements for the provision in court of interpreters for the deaf, or, if they prefer, to apply for an interpreter or communication aid under the Act's provisions.
125. The judge or magistrates and at least one legal representative for both the prosecution and the defence must be able to see and hear the witness giving evidence and be able to communicate with the intermediary. The jury will also be able to see and hear the witness unless the evidence is being video-recorded (in which case they will see the recording when it is shown to them later).
126. Where intermediaries are used at a very early stage of an investigation or proceedings, and subsequently an application is made for a video recording of an interview in which they were involved to be admitted as evidence, that direction can be given despite the judge, magistrates or legal representatives not having been present. But the intermediary who was involved must still gain the court's approval retrospectively before the recording can be admitted.
127. Intermediaries will have to declare that they will perform their function faithfully. They will have the same obligation as foreign language interpreters (whose services are not a measure for which this section provides) not to wilfully make false or misleading statements to the witness or the court. If they do make such statements they will commit an offence under the Perjury Act 1911.