



TITLE Commencement of sections 98-103 & 105
Coroners and Justice Act 2009.

From: Victim and Witness Unit
Ministry of Justice

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Purpose of this Circular

1. The purpose of this circular is to inform criminal justice practitioners and other interested parties that sections 98-103 & 105 and Schedule 14 of the Coroners and Justice Act 2009 (“the 2009 Act”) which amend the special measures provisions in the Youth Justice and Criminal Evidence Act 1999 (“the 1999 Act”) come into force in England and Wales on **27th June 2011**.

Background and position before these amendments

2. The 1999 Act provides a range of special measures which the court can direct in order to assist vulnerable and intimidated witnesses to give their best evidence in court.

3. Section 16 of the 1999 Act sets out the criteria for eligibility for special measures on the basis of a witness’s vulnerability. It currently provides that all children under 17 years of age are eligible. Witnesses other than children will also be eligible where the court considers that the quality of their evidence is likely to be diminished due to:

- A mental disorder as defined by the Mental Health Act 1983 (as amended by the Mental Health Act 2007)
- A significant impairment of intelligence and social functioning
- A physical disability or a physical disorder

4. Section 17 of the 1999 Act provides that a witness is eligible for special measures where the court considers that the quality of their evidence is likely to be diminished by reason of fear or distress in connection with giving evidence. Complainants in respect of sexual offences who are witnesses in proceedings relating to such offences are eligible for special measures by virtue of section 17(4) of the 1999 Act unless they opt-out.

5. It is a matter for the prosecution or defence to decide whether or not to make a special measures application to the court. The court of its own motion can also raise the question. If the witness is eligible, the court will determine whether any of the special measures or a combination of them would be likely to improve the witness's evidence and if so, which ones, taking into account the witness's own views and the possibility that the measures might tend to inhibit the evidence being tested effectively.

Section 21 of the 1999 Act currently distinguishes between two categories of child witnesses, those in need of "special protection"¹ and children giving evidence in all other types of cases. For child witnesses in those types of cases, there is a presumption they will give evidence in chief by means of a video recording and any further evidence or cross-examination via a live link at trial, unless giving evidence that way would not improve the quality of their evidence. This presumption is however non-rebuttable in the case of a child in need of special protection.

6. The special measures currently available to both eligible vulnerable and intimidated witnesses are as follows:

¹ A child witness is "in need of special protection" if the offence (or any of the offences) to which the proceedings relate is a sexual offence case or case involving violence, abduction or neglect

- Screening the witness from the accused (s.23)
- Giving evidence by live link (s.24)
- Giving evidence in private, in a sexual case or where the court considers that the witness may be intimidated (s.25)
- Ordering the removal of wigs and gowns (s.26)
- Video-recorded evidence in chief (s.27)

Two additional special measures are available solely to eligible vulnerable witnesses:

- Intermediaries to enhance witness communication (s.29)
- Aids to communication such as alphabet boards. (s.30)

Amendments to the Special Measures Provisions

9. The Coroners and Justice Act 2009 makes a number of amendments to the special measures provisions in the Youth Justice and Criminal Evidence Act 1999 (1999 Act) provisions summarised below.

Child Witnesses

Section 98 extends automatic eligibility for special measures to witnesses under the age of 18 (as opposed to 17).

Section 100 amends section 21 of the 1999 Act by removing the category of child witnesses in need of “special protection”. The effect of this change is to place all child witnesses in the same position regardless of offence. Thus for all child witnesses there is a presumption that they will give their evidence in chief by a video-recorded statement and any further evidence by live link unless the court is satisfied that this will not improve the quality of the child’s evidence.

Additionally, subject to the agreement of the court, child witnesses may “opt out” of giving their evidence by either a video-recorded interview as evidence-in-chief or by

means of live link or both. If they do wish to “opt out” there is a presumption that they will give their evidence in the court room from behind a screen. Should they not wish to use a screen, they may also be allowed to “opt out” of using it, subject to the court’s agreement.

Section 105 amends the definition of a child in section 35 of the 1999 Act (ban on cross-examination by a defendant in person) to mean a person under the age of 18 years as opposed to 17.

Witnesses to Gun and Knife Crime Offences

Section 99 amends s.17 of the 1999 Act to extend automatic eligibility for special measures to witnesses in specified gun and knife crime offences listed in the new schedule 1A to the 1999 Act (inserted by Schedule 14 to the 2009 Act). It will remain a matter for the court to determine which, if any, special measures are appropriate in any particular case.

Sexual Offences Complainants

Section 101 inserts a new section 22A into the 1999 Act and makes special provision for adult complainants in sexual offence trials in the Crown Court. It provides, on application by a party to the proceedings, for the automatic admissibility of a video-recorded statement as evidence in chief under s.27 of the 1999 Act, unless this would not be in the interests of justice, or would not maximise the quality of the complainant’s evidence.

General

Section 102 amends s.24 of the 1999 Act so when the court directs a live link special measure it can also direct that a person specified by the court (witness supporter) can accompany the witness when the witness is giving evidence by live link.

Section 103 amends s.27 of the 1999 Act to relax the restrictions on a witness giving additional evidence in chief after the witness's video-recorded statement has been admitted.

Key Points to Note

- A description of each of the special measures including the use of video-recorded statements, witness supporters and the “witness opt out” feature in the 3rd edition of *Achieving Best Evidence: Guidance on Interviewing Victims and Witnesses and Guidance on Using Special Measures* and also *Vulnerable and Intimidated Witnesses a Police Service Guide*.
- Practitioners should be aware of the special measures provisions available to assist vulnerable and intimidated witnesses at the discretion of the court and the categories of witness to which they apply. They should also understand what the changes are to the special measures provisions and how they will affect the way they work.
- Special measures should be explained clearly to all eligible witnesses and their carers where applicable, to ensure that they are able to express an informed view about the measures before any application is made to the court.
- Applications for Special Measures directions should be made to the court in accordance with Part 29 of the Criminal Procedure Rules.
- MoJ circular 2011/03 published on the 21st March 2011 should be read in conjunction with this circular and all key points noted.

Useful Links

The Youth Justice and Criminal Evidence Act 1999

www.legislation.gov.uk/ukpga/1999/23/contents

The Coroners and Justice Act 2009

www.legislation.gov.uk/ukpga/2009/25/contents

MoJ Circular 2011/03

www.justice.gov.uk/publications/bills-and-acts/circulars/vulnerable-intimidated-witnesses-guidance.htm

Special Measures Fact Sheet

www.justice.gov.uk/guidance/protecting-the-vulnerable/vulnerable-intimidated-witnesses-guidance.htm

Achieving Best Evidence: Guidance on Interviewing Victims and Witnesses and
Guidance on using Special Measures (3rd Edition)

www.justice.gov.uk/guidance/protecting-the-vulnerable/vulnerable-intimidated-witnesses-guidance.htm

Vulnerable and Intimidated Witnesses a Police Service Guide

www.justice.gov.uk/guidance/protecting-the-vulnerable/vulnerable-intimidated-witnesses-guidance.htm