

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

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 V: Competence of witnesses and capacity to be sworn

Section 54: Determining whether a witness is competent

188. This section sets out how a witness's competence is to be determined if it is questioned by the prosecution, the defence or the court itself.
189. When the court assesses the witness's competence, *subsection (3)* requires it to take into account any special measures it has granted, or is planning to grant, under Chapter I (including, for example, communication aids or the giving of evidence through an intermediary). This is to avoid a potential witness being judged not to be competent to be a witness if the use of special measures would make him competent.
190. If the witness's competence is challenged and he needs to be questioned, *subsection (6)* requires the questions to be asked by the court (and not by the party that is calling or cross-examining the witness). Any such questioning will be done in the presence of both the prosecution and the defence. Courts will be allowed to ask for expert advice about the witness's competence. It will be the responsibility of the party calling the witness to satisfy the court that the witness is competent.