

CORONERS AND JUSTICE ACT 2009

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 3 - Criminal evidence, investigations and procedure

Chapter 3: Vulnerable and intimidated witnesses

Section 100: Special measures directions for child witnesses

495. **Section 100** amends section 21 of the 1999 Act so as to modify the “primary rule” that applies to child witnesses. This rule (before amendment of this section) requires all child witnesses to give evidence in chief by a video recorded statement and any further evidence by live link, unless (except for child witnesses in need of “special protection” in certain sexual and other offence cases) the court is satisfied that to do so will not improve the quality of that child’s evidence.
496. **Subsections (2) and (7)** remove the special category of child witnesses who are “in need of special protection”. The effect is to place all child witnesses on the same footing, regardless of the offence to which the proceedings relate.
497. **Subsections (4) and (5)** modify the primary rule so as to allow a child witness to opt out of giving evidence by a combination of video recorded evidence in chief and live link provided the court is satisfied, after taking into account certain factors, that not giving evidence in that way will not diminish the quality of the child’s evidence. If as a result of opting out of the primary rule, the child witness would fall to give his or her evidence in court (and not by way of a live link) a secondary requirement applies. This obliges the child witness to give evidence in court in accordance with the special measure in section 23 of the 1999 Act, that is, from behind a screen that shields the witness from viewing the defendant. The secondary requirement does not apply if the court considers it would not maximise the quality of the child’s evidence. The child may also opt out of this secondary requirement, subject to the agreement of the court.
498. **Subsection (6)** inserts new subsection (4C) into section 21 of the 1999 Act which sets out the factors the court must consider in deciding whether the child witness may opt out of the primary rule and also in deciding whether the child witness may opt out of the secondary requirement to give evidence from behind a screen. These are: the witness’s age and maturity, the witness’s ability to understand the consequences of giving evidence in court rather than via video-recorded statement, any relationship between the witness and accused, the witness’s social, cultural and ethnic background, and the nature and circumstances of the offence being tried, as well as any other factors the court considers relevant.
499. **Subsection (8)** makes related amendments to section 22 of the 1999 Act, which relates to witnesses who attain the age of 18 after the video recorded statement is made.