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STATUTORY INSTRUMENTS

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**2005 No. 384**

**The Criminal Procedure Rules 2005**

**PART 29**

**SPECIAL MEASURES DIRECTIONS**

**Application for special measures directions**

**29.1.**—(1) An application by a party in criminal proceedings for a magistrates' court or the Crown Court to give a special measures direction under section 19 of the Youth Justice and Criminal Evidence Act 1999<sup>(1)</sup> must be made in writing in the form set out in the Practice Direction.

(2) If the application is for a special measures direction—

- (a) enabling a witness to give evidence by means of a live link, the information sought in Part B of that form must be provided;
- (b) providing for any examination of a witness to be conducted through an intermediary, the information sought in Part C of that form must be provided; or
- (c) enabling a video recording of an interview of a witness to be admitted as evidence in chief of the witness, the information sought in Part D of that form must be provided.

(3) The application under paragraph (1) above must be sent to the court officer and at the same time a copy thereof must be sent by the applicant to every other party to the proceedings.

(4) The court officer must receive the application—

- (a) in the case of an application to a youth court, within 28 days of the date on which the defendant first appears or is brought before the court in connection with the offence;
- (b) in the case of an application to a magistrates' court, within 14 days of the defendant indicating his intention to plead not guilty to any charge brought against him and in relation to which a special measures direction may be sought; and
- (c) in the case of an application to the Crown Court, within 28 days of
  - (i) the committal of the defendant, or
  - (ii) the consent to the preferment of a bill of indictment in relation to the case, or
  - (iii) the service of a notice of transfer under section 53 of the Criminal Justice Act 1991<sup>(2)</sup>, or
  - (iv) where a person is sent for trial under section 51 of the Crime and Disorder Act 1998<sup>(3)</sup>, the service of copies of the documents containing the evidence on which the charge or charges are based under paragraph 1 of Schedule 3 to that Act, or

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<sup>(1)</sup> 1999 c. 23.

<sup>(2)</sup> 1991 c. 53; section 53 was amended by the Criminal Justice and Public Order Act 1994 (c. 33), Schedule 9, paragraph 49, the Crime and Disorder Act 1998 (c. 37), Schedule 8, paragraph 93 and the Access to Justice Act 1999 (c. 22), Schedule 4, paragraph 47. Section 53 is repealed by the Criminal Justice Act 2003 (c. 44), Schedule 37, Part 4, with effect from a date to be appointed.

<sup>(3)</sup> 1998 c. 37; section 51 is substituted by new sections 51 to 51E by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 1, paragraphs 15 and 18, with effect from a date to be appointed. Paragraph 1 of Schedule 3 was amended by the Access to

(v) the service of a Notice of Appeal from a decision of a youth court or a magistrates' court.

(5) A party to whom an application is sent in accordance with paragraph (3) may oppose the application for a special measures direction in respect of any, or any particular, measure available in relation to the witness, whether or not the question whether the witness is eligible for assistance by virtue of section 16 or 17 of the 1999 Act is in issue.

(6) A party who wishes to oppose the application must, within 14 days of the date the application was served on him, notify the applicant and the court officer, as the case may be, in writing of his opposition and give reasons for it.

(7) Paragraphs (5) and (6) do not apply in respect of an application for a special measures direction enabling a child witness in need of special protection to give evidence by means of a live link if the opposition is that the special measures direction is not likely to maximise the quality of the witness's evidence.

(8) In order to comply with paragraph (6)—

(a) a party must in the written notification state whether he—

(i) disputes that the witness is eligible for assistance by virtue of section 16 or 17 of the 1999 Act,

(ii) disputes that any of the special measures available would be likely to improve the quality of evidence given by the witness or that such measures (or a combination of them) would be likely to maximise the quality of that evidence, and

(iii) opposes the granting of a special measures direction; and

(b) where the application relates to the admission of a video recording, a party who receives a recording must provide the information required by rule 29.7(7) below.

(9) Except where notice is received in accordance with paragraph (6), the court (including, in the case of an application to a magistrates' court, a single justice of the peace) may—

(a) determine the application in favour of the applicant without a hearing; or

(b) direct a hearing.

(10) Where a party to the proceedings notifies the court in accordance with paragraph (6) of his opposition to the application, the justices' clerk or the Crown Court must direct a hearing of the application.

(11) Where a hearing of the application is to take place in accordance with paragraph (9) or (10) above, the court officer shall notify each party to the proceedings of the time and place of the hearing.

(12) A party notified in accordance with paragraph (11) may be present at the hearing and be heard.

(13) The court officer must, within 3 days of the decision of the court in relation to an application under paragraph (1) being made, notify all the parties of the decision, and if the application was made for a direction enabling a video recording of an interview of a witness to be admitted as evidence in chief of that witness, the notification must state whether the whole or specified parts only of the video recording or recordings disclosed are to be admitted in evidence.

(14) In this Part:

“an intermediary” has the same meaning as in section 29 of the 1999 Act<sup>(4)</sup>; and

“child witness in need of protection” shall be construed in accordance with section 21(1) of the 1999 Act.

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Justice Act 1999 (c. 22), section 67(1) and Schedule 15, Part 3; it is further amended by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 1, paragraphs 15, 20(1) and (2), with effect from a date to be appointed.

(4) Section 29 was amended by the Courts Act 2003 (c. 39), Schedule 8, paragraph 384(d).

*[Note. Formerly rules 1 and 2 of the Magistrates' Courts (Special Measures Directions) Rules 2002(5) and rules 1 and 2 of the Crown Court (Special Measures Directions and Directions Prohibiting Cross-examination) Rules 2002(6). See also chapter I of Part II of the Youth Justice and Criminal Evidence Act 1999.]*