
STATUTORY INSTRUMENTS

2011 No. 1709

The Criminal Procedure Rules 2011

PART 29

MEASURES TO ASSIST A WITNESS OR DEFENDANT TO GIVE EVIDENCE

SECTION 5: WITNESS ANONYMITY ORDERS

[Note. The rules in Section 2 (general rules) also apply.]

Exercise of court's powers

29.18.—(1) The court may decide whether to make, vary or discharge a witness anonymity order—

- (a) at a hearing (which will be in private, unless the court otherwise directs), or without a hearing (unless any party asks for one);
- (b) in the absence of a defendant.

(2) The court must not exercise its power to make, vary or discharge a witness anonymity order, or to refuse to do so—

- (a) before or during the trial, unless each party has had an opportunity to make representations;
- (b) on an appeal by the defendant to which applies Part 63 (appeal to the Crown Court) or Part 68 (appeal to the Court of Appeal about conviction or sentence), unless in each party's case—
 - (i) that party has had an opportunity to make representations, or
 - (ii) the appeal court is satisfied that it is not reasonably practicable to communicate with that party;
- (c) after the trial and any such appeal are over, unless in the case of each party and the witness—
 - (i) each has had an opportunity to make representations, or
 - (ii) the court is satisfied that it is not reasonably practicable to communicate with that party or witness.

Content and conduct of application for a witness anonymity order

29.19.—(1) An applicant for a witness anonymity order must—

- (a) include in the application nothing that might reveal the witness' identity;
- (b) describe the measures proposed by the applicant;
- (c) explain how the proposed order meets the conditions prescribed by section 88 of the Coroners and Justice Act 2009(1);

- (d) explain why no measures other than those proposed will suffice, such as—
 - (i) an admission of the facts that would be proved by the witness,
 - (ii) an order restricting public access to the trial,
 - (iii) reporting restrictions, in particular under section 46 of the Youth Justice and Criminal Evidence Act 1999(2) or under section 39 of the Children and Young Persons Act 1933(3),
 - (iv) a direction for a special measure under section 19 of the Youth Justice and Criminal Evidence Act 1999,
 - (v) introduction of the witness' written statement as hearsay evidence, under section 116 of the Criminal Justice Act 2003(4), or
 - (vi) arrangements for the protection of the witness;
- (e) attach to the application—
 - (i) a witness statement setting out the proposed evidence, edited in such a way as not to reveal the witness' identity,
 - (ii) where the prosecutor is the applicant, any further prosecution evidence to be served, and any further prosecution material to be disclosed under the Criminal Procedure and Investigations Act 1996, similarly edited, and
 - (iii) any defence statement that has been served, or as much information as may be available to the applicant that gives particulars of the defence; and
- (f) ask for a hearing, if the applicant wants one.
- (2) At any hearing of the application, the applicant must—
 - (a) identify the witness to the court, unless at the prosecutor's request the court otherwise directs; and
 - (b) present to the court, unless it otherwise directs—
 - (i) the unedited witness statement from which the edited version has been prepared,
 - (ii) where the prosecutor is the applicant, the unedited version of any further prosecution evidence or material from which an edited version has been prepared, and
 - (iii) such further material as the applicant relies on to establish that the proposed order meets the conditions prescribed by section 88 of the 2009 Act.
- (3) At any such hearing—
 - (a) the general rule is that the court will receive, in the following sequence—
 - (i) representations first by the applicant and then by each other party, in all the parties' presence, and then
 - (ii) information withheld from a defendant, and further representations by the applicant, in the absence of any (or any other) defendant; but
 - (b) the court may direct other arrangements for the hearing.
- (4) Before the witness gives evidence, the applicant must identify the witness to the court—
 - (a) if not already done;
 - (b) without revealing the witness' identity to any other party or person; and

(2) 1999 c. 23.

(3) 1933 c. 12; section 39 was amended by sections 57 and 64 of, and Schedule 5 to, the Children and Young Persons Act 1963 (c. 37), sections 37 and 39 of, and Schedule 3 to, the Criminal Justice Act 1982 (c. 48) and it is amended by section 48 of, and paragraphs 1 and 2 of Schedule 2 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23), with effect from a date to be appointed.

(4) 2003 c. 44.

- (c) unless at the prosecutor's request the court otherwise directs.

Duty of court officer to notify the Director of Public Prosecutions

29.20. The court officer must notify the Director of Public Prosecutions of an application, unless the prosecutor is, or acts on behalf of, a public authority.

Application to vary or discharge a witness anonymity order

29.21.—(1) A party who wants the court to vary or discharge a witness anonymity order, or a witness who wants the court to do so when the case is over, must—

- (a) apply in writing, as soon as reasonably practicable after becoming aware of the grounds for doing so; and
- (b) serve the application on—
 - (i) the court officer, and
 - (ii) each other party.
- (2) The applicant must—
 - (a) explain what material circumstances have changed since the order was made (or last varied, if applicable);
 - (b) explain why the order should be varied or discharged, taking account of the conditions for making an order; and
 - (c) ask for a hearing, if the applicant wants one.
- (3) Where an application includes information that the applicant thinks might reveal the witness' identity, the applicant must—
 - (a) omit that information from the application that is served on a defendant;
 - (b) mark the information to show that it is only for the court and the prosecutor (if the prosecutor is not the applicant); and
 - (c) with that information include an explanation of why it has been withheld.
- (4) Where a party applies to vary or discharge a witness anonymity order after the trial and any appeal are over, the party who introduced the witness' evidence must serve the application on the witness.

[Note. Under sections 91, 92 and 93 of the Coroners and Justice Act 2009, the court can vary or discharge a witness anonymity order—

- (a) *on an application, if there has been a material change of circumstances since it was made or previously varied; or*
- (b) *on the court's own initiative, unless the trial and any appeal are over.]*

Representations in response

29.22.—(1) This rule applies where a party or, where the case is over, a witness, wants to make representations about—

- (a) an application for a witness anonymity order;
- (b) an application for the variation or discharge of such an order; or
- (c) a variation or discharge that the court proposes on its own initiative.
- (2) Such a party or witness must—
 - (a) serve the representations on—

- (i) the court officer, and
 - (ii) each other party;
 - (b) do so not more than 14 days after, as applicable—
 - (i) service of the application, or
 - (ii) notice of the variation or discharge that the court proposes; and
 - (c) ask for a hearing, if that party or witness wants one.
- (3) Where representations include information that the person making them thinks might reveal the witness' identity, that person must—
- (a) omit that information from the representations served on a defendant;
 - (b) mark the information to show that it is only for the court (and for the prosecutor, if relevant); and
 - (c) with that information include an explanation of why it has been withheld.
- (4) Representations against a witness anonymity order must explain why the conditions for making the order are not met.
- (5) Representations against the variation or discharge of such an order must explain why it would not be appropriate to vary or discharge it, taking account of the conditions for making an order.
- (6) A prosecutor's representations in response to an application by a defendant must include all information available to the prosecutor that is relevant to the conditions and considerations specified by sections 88 and 89 of the Coroners and Justice Act 2009.