STATUTORY INSTRUMENTS

2015 No. 1490

The Criminal Procedure Rules 2015

PART 18

MEASURES TO ASSIST A WITNESS OR DEFENDANT TO GIVE EVIDENCE

LIVE LINK DIRECTIONS

[Note. The rules in this Section do not apply to an application for a special measures direction allowing a witness to give evidence by live link: as to which, see rules 18.8 to 18.13.]

Exercise of court's powers

18.23. The court may decide whether to give or discharge a live link direction—

(a) at a hearing, in public or in private, or without a hearing;

(b) in a party's absence, if that party—

(i) applied for the direction or discharge, or

(ii) has had at least 14 days in which to make representations in response to an application by another party.

Content of application for a live link direction

18.24. An applicant for a live link direction must—

(a) unless the court otherwise directs, identify the place from which the witness will give evidence;

(b) if that place is in the United Kingdom, explain why it would be in the interests of the efficient or effective administration of justice for the witness to give evidence by live link;

(c) if the applicant wants the witness to be accompanied by another person while giving evidence—

(i) name that person, if possible, and

(ii) explain why it is appropriate for the witness to be accompanied;

(d) ask for a hearing, if the applicant wants one, and explain why it is needed.

[Note. See section 32 of the Criminal Justice Act 1988(**1**) *and section 51 of the Criminal Justice Act 2003*(**2**)*.*

The Practice Direction sets out a form of application for use in connection with this rule.]

(**1**) 1988 c. 33; section 32 was amended by section 55 of the Criminal Justice Act 1991 (c. 53), section 29 of, and paragraph 16 of Schedule 2 to, the Criminal Appeal Act 1995 (c. 35), section 62 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 67 of, and Schedule 6 and paragraph 3 of Schedule 7 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23) and paragraphs 24 and 26 of the Schedule to S.I. 2004/2035.

(**2**) 2003 c. 44.

Application to discharge a live link direction

18.25.—(1) A party who wants the court to discharge a live link direction 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 direction was given;

(b) explain why it is in the interests of justice to discharge the direction; and

(c) ask for a hearing, if the applicant wants one, and explain why it is needed.

[Note. See section 32(4) of the Criminal Justice Act 1988(**3**) *and section 52(3) of the Criminal Justice Act 2003*(**4**)*.]*

Representations in response

18.26.—(1) This rule applies where a party wants to make representations about an application for a live link direction or for the discharge of such a direction.

(2) Such a party must—

(a) serve the representations on—

(i) the court officer, and

(ii) each other party;

(b) do so not more than 14 days after service of the application; and—

(c) ask for a hearing, if that party wants one, and explain why it is needed.

(3) Representations against a direction or discharge must explain, as applicable, why the conditions prescribed by the Criminal Justice Act 1988 or the Criminal Justice Act 2003 are not met.

Summary of eligibility for measures to which this Part applies

Special measures direction

Under section 16 of the Youth Justice and Criminal Evidence Act 1999(**5**)*, a witness is eligible for the assistance of a special measures direction given under section 19 of that Act if—*

(a) *the witness is under 18; or*

(b) *the witness has—*

(i) *a mental disorder, or a significant impairment of intelligence and social functioning, or*

(ii) *a physical disability or disorder*

and the court considers that the completeness, coherence and accuracy (the 'quality') of evidence given by the witness is likely to be diminished by reason of those circumstances.

Under section 17 of the 1999(**6**) *Act, a witness is eligible for such assistance if—*

(**3**) 1988 c. 33; section 32(4) was amended by article 3 of, and paragraphs 24 and 26 of the Schedule to S.I. 2004/2035.
(**4**) 2003 c. 44.
(**5**) 1999 c. 23.
(**6**) 1999 c. 23; section 17 was amended by section 99 of the Coroners and Justice Act 2009 (c. 25) and paragraphs 1 and 2 of the Schedule to S.I. 2013/554. It is further amended by section 46 of the Modern Slavery Act 2015 (c. 30), with effect from a date to be appointed.

(a) *the court is satisfied that the quality of evidence given by the witness is likely to be diminished because of his or her fear or distress in connection with giving evidence, taking account particularly of—*

(i) *the circumstances of the offence,*

(ii) *the witness' age, social and cultural background, ethnic origins, domestic and employment circumstances, religious beliefs or political opinions,*

(iii) *any behaviour towards the witness on the part of the defendant, the defendant's family or associates, or any other potential defendant or witness, and*

(iv) *the witness' own views;*

(b) *the witness is the complainant in respect of a sexual offence, and has not declined such assistance; or*

(c) *the offence is one of a list of offences involving weapons, and the witness has not declined such assistance.*

Section 28 of the 1999 Act (video recorded cross-examination or re-examination) is not yet in force. With that exception, all the special measures listed in rule 18.1 potentially are available where the witness is eligible for assistance under section 16 of the Act. Those numbered (i) to (v) are available where the witness is eligible for assistance under section 17.

As a general rule, but with exceptions, the court must give a special measures direction—

(a) *under section 21 or 22 of the 1999 Act*(**7**)*, where the witness—*

(i) *is under 18, or*

(ii) *was under that age when interviewed*

whether or not an application for a direction is made;

(b) *under section 22A of the 1999 Act*(**8**)*, where an application is made in the Crown Court for the evidence of a witness who is the complainant of a sexual offence to be admitted by means of a video recording of an interview with the witness in the place of examination-in-chief.*

Defendant's evidence direction

Under section 33A of the 1999 Act(**9**)*, the court can allow a defendant to give evidence by live link, or (when the Coroners and Justice Act 2009 comes into force) under section 33BA*(**10**) *can allow a defendant to give evidence through an intermediary, if—*

(a) *the defendant—*

(i) *is under 18, and the defendant's ability to participate effectively as a witness giving oral evidence is compromised by his or her level of intellectual ability or social functioning; or*

(ii) *suffers from a mental disorder or some other significant impairment of intelligence and social functioning and cannot participate effectively as a witness giving oral evidence for that reason;*

(b) *the use of a live link—*

(i) *would enable the defendant to participate more effectively, and*

(**7**) 1999 c. 23; sections 21 and 22 were amended by sections 98, 100 and 178 of, and Part 3 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25).
(**8**) 1999 c. 23; section 22A was inserted by section 101 of the Coroners and Justice Act 2009 (c. 25).
(**9**) 1999 c. 23; section 33A was inserted by section 47 of the Police and Justice Act 2006 (c. 48).
(**10**) 1999 c. 23; section 33BA is inserted by section 104 of the Coroners and Justice Act 2009 (c. 25), with effect from a date to be appointed.

(ii) *is in the interests of justice;*

(c) *the examination of the defendant through an intermediary is necessary to ensure that the defendant receives a fair trial.*

Witness anonymity order

Under section 86 of the Coroners and Justice Act 2009(**11**)*, a witness anonymity order is an order that specifies measures to be taken to ensure that the identity of a witness is not disclosed, such as withholding the witness' name from materials disclosed to a party to the proceedings, the use of a pseudonym, the screening of the witness from view, the modulation of the witness' voice, and the prohibition of questions that might reveal his or her identity. Before making such an order, the court must—*

(a) *be satisfied that three conditions prescribed by the Act are met (section 88 of the 2009 Act); and*

(b) *have regard to considerations specified by the Act (section 89 of the 2009 Act).*

Live link direction

Under section 32 of the Criminal Justice Act 1988, the court can allow a witness who is outside the United Kingdom to give evidence by live link—

(a) *in proceedings in a youth court, or on appeal from such proceedings; or*

(b) *at a trial in the Crown Court, or on appeal from such a trial.*

Under section 51 of the Criminal Justice Act 2003, on an application or on its own initiative, the court can allow a witness who is in the United Kingdom, but outside the building in which the proceedings are held, to give evidence by live link. The court must be satisfied that that is in the interests of the efficient or effective administration of justice.

If a witness is eligible for the assistance of a special measures direction (as to which, see the note above), the court can allow the witness to give evidence by live link under sections 19 and 24 of the 1999 Act(**12**)*. See rules 18.8 to 18.13.*

(**11**) 2009 c. 25.

(**12**) 1999 c. 23; section 24 was amended by paragraph 385 of Schedule 8 to, and Schedule 10 to, the Courts Act 2003 (c. 39) and section 102(1) of the Coroners and Justice Act 2009 (c. 25).