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STATUTORY INSTRUMENTS

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**2004 No. 185 (L. 2)**

**SUPREME COURT OF ENGLAND AND WALES**

**The Crown Court (Special Measures Directions and Directions Prohibiting Cross-examination)(Amendment) Rules 2004**

*Made* - - - - *1st February 2004*  
*Laid before Parliament* *2nd February 2004*  
*Coming into force* - - *23rd February 2004*

We, the Crown Court Rule Committee, in exercise of the powers conferred upon us by sections 84(1) and 86 of the Supreme Court Act 1981<sup>(1)</sup> and sections 20(6), 29(3) and (5) and 65(1) of the Youth Justice and Criminal Evidence Act 1999<sup>(2)</sup>, hereby make the following Rules:

**Citation, commencement and interpretation**

1.—(1) These Rules may be cited as the Crown Court (Special Measures Directions and Directions Prohibiting Cross-examination)(Amendment) Rules 2004 and shall come into force on 23rd February 2004.

(2) In these Rules, “the Special Measures Directions Rules” means the Crown Court (Special Measures Directions and Directions Prohibiting Cross-examination) Rules 2002<sup>(3)</sup>.

**Amendment of the Special Measures Directions Rules**

2.—(1) The Special Measures Directions Rules shall be amended in accordance with the following provisions of this rule.

(2) In rule 1 (citation, commencement and interpretation), in paragraph (2) at the end add—  
““an intermediary” has the same meaning as in section 29 of the Act;  
“child witness in need of protection” shall be construed in accordance with section 21(1) of the Act.”.

(3) In rule 2 (application for a special measures direction)—  
(a) for paragraph (2), substitute—  
“(2) If the application is for a special measures direction—

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(1) 1981 c. 54.  
(2) 1999 c. 23.  
(3) S.I.2002/1688 (L.5).

- (a) enabling a witness to give evidence by means of a live link, the information sought in Part B of the form prescribed in the Schedule to these Rules 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;
  - (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.”;
- (b) after paragraph (6) insert—
  - “(6A) Paragraphs (5) and (6) above do not apply in respect of an application for 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.”.
- (4) In rule 4 (late applications), after paragraph (3), add—
  - “(4) Paragraphs (2) and (3) above do not apply in respect of an application made orally at the trial for a special measures direction—
    - (a) enabling a child witness in need of special protection to give evidence by means of a live link; or
    - (b) enabling a video recording of such a child to be admitted as evidence in chief of the witness,if the opposition is that the special measures direction will not maximise the quality of the witness’s evidence.”.
- (5) In rule 7 (application for special measures direction for witness to give evidence by means of a live television link)—
  - (a) in paragraph (3) omit the words “within the meaning of section 21(1)(b) of the Act”;
  - (b) after paragraph (4) add the following paragraph—
    - “(5) If the special measures directions combine provision for a witness to give evidence by means of a live link with provision for the examination of the witness to be conducted through an intermediary, the witness shall be accompanied at the live link only by—
      - (a) the intermediary; and
      - (b) such other persons as may be acceptable to a judge of the Crown Court.”.
- (6) In rule 8 (video recording of testimony from witnesses)—
  - (a) after paragraph (4) insert—
    - “(4A) If the special measures directions enabling a video recording of an interview of a witness to be admitted as evidence in chief of the witness with provision for the examination of the witness to be conducted through an intermediary, the information to be provided under paragraph (4)(c) above shall be the same as that for other persons present at the recording but with the addition of details of the declaration made by the intermediary under rule 9A.
    - (4B) If the special measures directions enabling a video recording of an interview of a witness to be admitted as evidence in chief of the witness with provision for the witness, in accordance with section 30 of the Act, to be provided with a device as an aid to communication during the video recording of the interview the information to be included under paragraph (4)(d) above shall include also details of any such device used for the purposes of the recording.”.
  - (b) after paragraph (5) insert—

“(5A) A party who seeks to oppose an application for a special measures direction enabling a video recording of an interview of a child witness to be admitted as evidence in chief of the witness must, in order to comply with rule 2(5) above, state why in his view the giving of a special measures direction would not be likely to maximise the quality of the witness’s evidence.

(5B) However, paragraph (5A) above does not apply if the witness is a child witness in need of special protection.”.

(7) after rule 9 (expert witness), insert—

**“Intermediaries**

**9A.** The declaration required to be made by an intermediary in accordance with section 29(5) of the Act shall be in the following form—

“I solemnly, sincerely and truly declare that I will well and faithfully communicate questions and answers and make true explanation of all matters and things as shall be required of me according to the best of my skill and understanding.”.

(8) For the Schedule, substitute the following Schedule—

“SCHEDULE

Rule 2(1) and (2)

FORM OF APPLICATION FOR A SPECIAL MEASURES DIRECTION UNDER SECTION 19 OF THE YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999

An application must be made within 28 days of—

- (a) the committal of the defendant;
- (b) the consent to the preferment of the bill of indictment;
- (c) a notice of transfer;
- (d) the service of copies of the documents containing the evidence on which the charge or charges are based under the Crime and Disorder Act 1998; or
- (e) the notice of appeal.

This form may also be used where an extension of time has been granted for the making of this application.

A copy of this form must be given at the same time to the other party or parties to the case.

**PART A**

**To be completed by all applicants**

<i>Details required</i>	<i>Notes</i>
<b>Details of witness</b>	An application by the defence for evidence to be given through a live television link or by means of a video recording need not disclose who that witness is, except where the witness is to give evidence in support of an alibi.
Name of Witness:	
Date of birth of witness:	
If a previous application has been made to tender in evidence a video recording of	If the applicant is the prosecutor, give the name of the witness (otherwise leave blank).

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<i>Details required</i>	<i>Notes</i>
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testimony from the witness, give the date and (if known) result of that application.

**Case details**

Name of Crown Prosecution Service office:

Crown Prosecution Service number:

Defendant(s):

    surname:

    forenames:

Case reference numbers:

(a) unique reference number assigned by police:

(b) trial number:

Court area:

The area in which the court hearing the case is situated.

Charges:

Give brief details of those charges to which this application applies.

**Details of application**

Specify the special measures being sought:

The statement should make clear whether the applicant seeks automatic eligibility (see Reasons for application section below) or whether the applicant alleges that the quality of the evidence will be reduced unless a direction is given. In the latter case, the grounds on which the applicant alleges that the quality of the witness's evidence is likely to be diminished in terms of completeness, coherence and accuracy should be clearly stated.

State the grounds on which the witness relies in support of the application for a special measures direction:

Give a description of evidence submitted in support of this application:

This requirement is optional.

Examples of evidence might be:

birth certificate;

medical report;

expert evidence;

police report.

**Arrangements which may be made available**

<i>Details required</i>	<i>Notes</i>
<p>Give a description of the arrangements relevant to the measures applied for which may be made available in the area in which it is likely the hearing will take place:</p> <p><b>Reason for application</b></p> <p><b>A.</b> Is the application for special measures for any of the following?</p> <ul style="list-style-type: none"><li>(i) video recorded evidence in chief only;</li><li>(ii) live link only;</li><li>(iii) both these measures?</li></ul> <p>Yes/No</p> <p><b>B.</b> Is the witness a child witness in need of special protection at the time that any relevant recording was made? Yes/No</p> <p><b>C.</b> Is the witness a child under 17 but not a child witness in need of special protection?</p> <p>Yes/No</p> <p>If the answer to both A and B is “Yes”, information concerning the grounds of application and any views of the witness need not be provided.</p> <p>If the answer to C is “Yes” and there is no application for either video recorded evidence in chief or live link, (or both) state the reasons why it is said that the special measures of video evidence in chief, live link, (or both) would NOT maximise the quality of the child’s evidence.</p> <p>For all witnesses over 17 years and for applications for witnesses under 17 years for measures other than video recorded evidence in chief or live link:</p> <p>Give the grounds for believing the special measures being sought in this application will improve the quality of the witness’s evidence:</p> <p>Give the views of the witness as to why the measures sought in this application are required:</p> <p><b>Material change of circumstances</b></p>	<p>A child witness in need of special protection is defined by Section 21 of the Youth Justice and Criminal Evidence Act 1999.</p> <p>Section 21 of the Youth Justice and Criminal Evidence Act 1999.</p> <p>Section 21 of the Youth Justice and Criminal Evidence Act 1999 sets out a primary rule in favour of providing child witnesses with video recorded evidence in chief and live link unless, for witnesses who are not child witnesses in need of special protection, this would not be likely to maximise the quality of the witness’s evidence.</p> <p>This requirement applies only where—</p> <ul style="list-style-type: none"><li>(a) a special measures direction is already in force and application is being made to discharge or vary the direction, or</li></ul>

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<i>Details required</i>	<i>Notes</i>
Give a description of any material change of circumstances relied upon to support this application:	(b) a previous application for a special measures direction was refused and this application seeks to reverse that decision.

## PART B

### To be completed if the application is for evidence to be given through a live television link

<i>Details required</i>	<i>Notes</i>
<b>Details of application</b>	
Give—	
(a) the address of any venue from which the witness will give evidence if the court's own live television link is not used:	
(b) the name of the person who it is proposed will accompany the witness:	
(c) the occupation of this person:	An application by the defence need not disclose the name of the person proposed to accompany the witness if disclosure could lead to the identification of the witness.
(d) the relationship (if any) of this person to the witness:	
<b>Grounds</b>	
State why it is believed that this person should accompany the witness:	

## PART C

### To be completed if the application is to tender in evidence a video recording under Section 27 of the Youth Justice and Criminal Evidence Act 1999

<i>Details required</i>	<i>Notes</i>
<b>Video recording(s)</b>	
Statement as to circumstances in which video recording made:	These details need to be completed only to the extent that the information is not contained in the video recording itself.
Date(s) of video recording(s):	
Time(s) of video recording(s):	Give the times at which recording began and finished, including details of any interruptions.
Location and normal function of premises where video recording made:	Give address of premises where recording made and state the usual function of those premises.
<b>Details of those present while recording made</b>	

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<i>Details required</i>	<i>Notes</i>
Give details of each person present at any point during the recording:	Include name, age and occupation of anyone present; time for which present; relationship (if any) to witness and to the defendant.

**Use of an intermediary**

1. Was any person used as an intermediary in the making of the video recording?

If so, has the court's approval for the purposes of section 29 of the Youth Justice and Criminal Evidence Act 1999 been given?

The court's approval for the purposes of section 29 of the Youth Justice and Criminal Evidence Act 1999 must be given before the Special Measures Direction is given. The court's approval may be sought at the hearing of the application for the special measures direction.

If it has, give details.

If the court's approval has not been obtained the information required in Part C of this Form must be given.

2. Did the intermediary make the appropriate declaration before the interview began?

Is the declaration recorded on the video recording?

The declaration is—

"I solemnly, sincerely and truly declare that I will well and faithfully communicate questions and answers and make true explanation of all matters and things as shall be required of me according to the best of my skill and understanding."

**Equipment used**

Give a description of—

- (a) the equipment used for the recording;
- (b) any devices used as an aid to communication:

The description must include the following information—

number and type of cameras used (fixed or mobile); the number and location of microphones; the video format used; and whether it offered single or multiple recording facilities and if it did which were used.

In the case of communication aids, describe how the device was operated. State also whether the equipment was provided for or owned by the witness or the intermediary and whether any additional needs arose for the witness or the intermediary as a result of using the devices. (Refer to the examples given in Part C, paragraph 9(b)).

**Recordings of part only of an interview**

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<i>Details required</i>	<i>Notes</i>
State whether the video recording contains part only of the interview with the witness:	A copy of any video recordings of other parts of the interview with the witness which it is not proposed to tender in evidence must also be provided to the court and the other parties. The details of each such recording must be given as above. Use separate sheets where necessary.
<b>Details of copy</b>	
State in respect of each video recording whether it is a copy, and give the following details in respect of each copy—	
Name and address of person who has the mastertape:	
When, and by whom, the copy was made:	
<b>Attendance and supply of copies</b>	
In the opinion of the applicant—	
(a) is the witness available for cross-examination?	
(b) if the witness is not available for cross-examination, have the parties agreed that the witness need not be available?	
Has the agreement of the other parties to the video recording(s) being tendered as evidence been sought?	
Have copies of the video recording(s) to which this application relates been disclosed to the other parties?	
Has a copy of this notice and the video recording(s) to which it relates been served on each party to the proceedings?	Where the application is by the accused, the video recording(s) do not have to be served on the prosecution until the close of the prosecution case at the trial.

**PART D**

**To be completed if the application is for the examination of the witness to be conducted through an intermediary**

<i>Details required</i>	<i>Notes</i>
<b>Details of application</b>	
1. Give a description of the communication needs of the witness:	Where an assessment has been undertaken by a relevant professional, give details of where and by whom the assessment was carried out.
2. State why you consider that the quality of the evidence given by the	



<i>Details required</i>	<i>Notes</i>
witness would be improved by use of an intermediary:	
3. Give the name of the person through whom it is proposed the examination of the witness be conducted:	
4. What is the occupation of this person and what is the person's area of specialism:	
5. Is this person related to the witness?	
If not related to the witness, does the intermediary know the witness and, if so, how and to what extent?	
6. Is this person registered with the Intermediary Registration Board?	If the person is not registered with the IRB, give the reason why this person is preferred to an IRB registered person.
7. Why do you consider this person has the necessary skills to meet the particular communication needs of the witness:	
8. Has this person been used in the pre-trial investigation?	If so, give reasons why it is proposed to use the same person throughout the proceedings.
9. Communication aids—	
(a) give details of any device used or which it is intended to use as a communication aid:	Give details of any devices that may be used and how they are operated.
(b) are there any issues which arise as a result of this device being used?	Examples might be: (a) whether breaks might be needed for the witness and/or the intermediary: (b) the facilities that may be needed for the use of the devices, for example power sources.
Signature of applicant	Date:”.
or	
applicant's Solicitor:	

1st February 2004

*Falconer of Thoroton, C.*

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*Woolf, C.J.*  
*Master Venne*  
*Kay, L.J.*  
*Potter, L.J.*  
*Jeffrey Regden, Q.C.*  
*Peter Carter, Q.C.*  
*Elizabeth Barnett, J.P.*

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## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules amend the Crown Court (Special Measures Directions and Directions Prohibiting Cross-examination) Rules 2002 so as to make provision for the use by witnesses at trials of intermediaries and also of devices as an aid to communication. The form used by those seeking to avail themselves of these special measures is amended to include new provisions specifically directed at the use of intermediaries (Part D of the form) and devices as an aid to communication. Special measures directions are available for those witnesses eligible for assistance under section 16 and 17 of the Youth Justice and Criminal Evidence Act 1999 (c. 23) but not for those who merely seek a foreign language interpreter. The Rules also provide that the provisions enabling a party to proceedings to oppose an application for a special measures direction do not apply where the application is for a child witness in need of special protection if the opposition is that the special measures direction is not likely to maximise the quality of the witness's evidence.