
STATUTORY INSTRUMENTS

2005 No. 384

The Criminal Procedure Rules 2005

PART 29

SPECIAL MEASURES DIRECTIONS

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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⁽¹⁾ 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—

(1) 1999 c. 23.

- (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(2), or
 - (iv) where a person is sent for trial under section 51 of the Crime and Disorder Act 1998(3), 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
 - (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

(2) 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.

(3) 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 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.

(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⁽⁴⁾; and

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

[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.]

Application for an extension of time

29.2.—(1) An application may be made in writing for the period of 14 days or, as the case may be, 28 days specified in rule 29.1(4) to be extended.

(2) The application may be made either before or after that period has expired.

(3) The application must be accompanied by a statement setting out the reasons why the applicant is or was unable to make the application within that period and a copy of the application and the statement must be sent to every other party to the proceedings.

(4) An application for an extension of time under this rule shall be determined by a single justice of the peace or a judge of the Crown Court without a hearing unless the justice or the judge otherwise directs.

(5) The court officer shall notify all the parties of the court's decision.

[Note. Formerly rule 3 of the Magistrates' Courts (Special Measures Directions) Rules 2002 and rule 3 of the Crown Court (Special Measures Directions and Directions Prohibiting Cross-examination) Rules 2002.]

Late applications

29.3.—(1) Notwithstanding the requirements of rule 29.1—

(a) an application may be made for a special measures direction orally at the trial; or

(b) a magistrates' court or the Crown Court may of its own motion raise the issue whether a special measures direction should be given.

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

(5) S.I. 2002/1687; amended by S.I. 2004/184.

(6) S.I. 2002/1688; amended by S.I. 2004/185.

- (2) Where an application is made in accordance with paragraph (1)(a)—
 - (a) the applicant must state the reasons for the late application; and
 - (b) the court must be satisfied that the applicant was unable to make the application in accordance with rule 29.1.
- (3) The court shall determine before making a special measures direction—
 - (a) whether to allow other parties to the proceedings to make representations on the question;
 - (b) the time allowed for making such representations (if any); and
 - (c) whether the question should be determined following a hearing at which the parties to the proceedings may be heard.
- (4) Paragraphs (2) and (3) 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.

[Note. Formerly rule 4 of the Magistrates' Courts (Special Measures Directions) Rules 2002 and rule 4 of the Crown Court (Special Measures Directions and Directions Prohibiting Cross-examination) Rules 2002.]

Discharge or variation of a special measures direction

29.4.—(1) An application to a magistrates' court or the Crown Court to discharge or vary a special measures direction under section 20(2) of the Youth Justice and Criminal Evidence Act 1999 must be in writing and each material change of circumstances which the applicant alleges has occurred since the direction was made must be set out.

(2) An application under paragraph (1) must be sent to the court officer as soon as reasonably practicable after the change of circumstances occurs.

(3) The applicant must also send copies of the application to each party to the proceedings at the same time as the application is sent to the court officer.

(4) A party to whom an application is sent in accordance with paragraph (3) may oppose the application on the ground that it discloses no material change of circumstances.

(5) Rule 29.1(6) to (13) shall apply to an application to discharge or vary a special measures direction as it applies to an application for a direction.

[Note. Formerly rule 5 of the Magistrates' Courts (Special Measures Directions) Rules 2002 and rule 5 of the Crown Court (Special Measures Directions and Directions Prohibiting Cross-examination) Rules 2002.]

Renewal application following a material change of circumstances

29.5.—(1) Where an application for a special measures direction has been refused by a magistrates' court or the Crown Court, the application may only be renewed ("renewal application") where there has been a material change of circumstances since the court refused the application.

(2) The applicant must—

- (a) identify in the renewal application each material change of circumstances which is alleged to have occurred; and

- (b) send the renewal application to the court officer as soon as reasonably practicable after the change occurs.
- (3) The applicant must also send copies of the renewal application to each of the parties to the proceedings at the same time as the application is sent to the court officer.
- (4) A party to whom the renewal application is sent in accordance with paragraph (3) above may oppose the application on the ground that it discloses no material change of circumstances.
- (5) Rules 29.1(6) to (13), 29.6 and 29.7 apply to a renewal application as they apply to the application which was refused.

[Note. Formerly rule 6 of the Magistrates' Courts (Special Measures Directions) Rules 2002 and rule 6 of the Crown Court (Special Measures Directions and Directions Prohibiting Cross-examination) Rules 2002.]

Application for special measures direction for witness to give evidence by means of a live television link

29.6.—(1) Where the application for a special measures direction is made, in accordance with rule 29.1(2)(a), for a witness to give evidence by means of a live link, the following provisions of this rule shall also apply.

(2) A party who seeks to oppose an application for a child witness to give evidence by means of a live link must, in order to comply with rule 29.1(5), 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.

(3) However, paragraph (2) does not apply in relation to a child witness in need of special protection.

(4) Where a special measures direction is made enabling a witness to give evidence by means of a live link, the witness shall be accompanied at the live link only by persons acceptable to the court.

(5) If the special measures directions combine provisions 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 the court.

[Note. Formerly rule 7 of the Magistrates' Courts (Special Measures Directions) Rules 2002 and rule 7 of the Crown Court (Special Measures Directions and Directions Prohibiting Cross-examination) Rules 2002. As to the provision of support for witnesses giving evidence by live television link see also direction III.29 in the Practice Direction.]

Video recording of testimony from witnesses

29.7.—(1) Where an application is made to a magistrates' court or the Crown Court for a special measures direction enabling a video recording of an interview of a witness to be admitted as evidence in chief of the witness, the following provisions of this rule shall also apply.

(2) The application made in accordance with rule 29.1(1) must be accompanied by the video recording which it is proposed to tender in evidence and must include—

- (a) the name of the defendant and the offence to be charged;
- (b) the name and date of birth of the witness in respect of whom the application is made;
- (c) the date on which the video recording was made;
- (d) a statement as to whether, and if so at what point in the video recording, an oath was administered to, or a solemn declaration made by, the witness;

- (e) a statement that, in the opinion of the applicant, either—
 - (i) the witness is available for cross-examination, or
 - (ii) the witness is not available for cross-examination and the parties have agreed that there is no need for the witness to be so available;
- (f) a statement of the circumstances in which the video recording was made which complies with paragraph (4) of this rule; and
- (g) the date on which the video recording was disclosed to the other party or parties.

(3) Where it is proposed to tender part only of a video recording of an interview with the witness, the application must specify that part and be accompanied by a video recording of the entire interview, including those parts which it is not proposed to tender in evidence, and by a statement of the circumstances in which the video recording of the entire interview was made which complies with paragraph (4) of this rule.

(4) The statement of the circumstances in which the video recording was made referred to in paragraphs (2)(f) and (3) of this rule shall include the following information, except in so far as it is contained in the recording itself—

- (a) the times at which the recording commenced and finished, including details of interruptions;
- (b) the location at which the recording was made and the usual function of the premises;
- (c) in relation to each person present at any point during, or immediately before, the recording—
 - (i) their name, age and occupation,
 - (ii) the time for which each person was present, and
 - (iii) the relationship, if any, of each person to the witness and to the defendant;
- (d) in relation to the equipment used for the recording—
 - (i) a description of the equipment,
 - (ii) the number of cameras used,
 - (iii) whether the cameras were fixed or mobile,
 - (iv) the number and location of the microphones,
 - (v) the video format used; and
 - (vi) whether it offered single or multiple recording facilities and, if so, which were used; and
- (e) the location of the mastertape if the video recording is a copy and details of when and by whom the copy was made.

(5) 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) 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 29.9.

(6) 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 Youth Justice and Criminal Evidence Act 1999, 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) shall include also details of any such device used for the purposes of recording.

(7) A party who receives a recording under paragraph (2) must within 14 days of its receipt, notify the applicant and the court officer, in writing—

- (a) whether he objects to the admission under section 27 of the 1999 Act⁽⁷⁾ of any part of the video recording or recordings disclosed, giving his reasons why it would not be in the interests of justice for the recording or any part of it to be admitted;
- (b) whether he would agree to the admission of part of the video recording or recordings and, if so, which part or parts; and
- (c) whether he wishes to be represented at any hearing of the application.

(8) 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 29.1(6), 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.

(9) However, paragraph (8) does not apply if the witness is a child witness in need of special protection.

(10) Notwithstanding the provisions of rule 29.1 and this rule, any video recording which the defendant proposes to tender in evidence need not be sent to the prosecution until the close of the prosecution case at the trial.

(11) The court may determine an application by the defendant to tender in evidence a video recording even though the recording has not, in accordance with paragraph (10), been served upon the prosecution.

(12) Where a video recording which is the subject of a special measures direction is sent to the prosecution after the direction has been made, the prosecutor may apply to the court for the direction to be varied or discharged.

(13) An application under paragraph (12) may be made orally to the court.

(14) A prosecutor who makes an application under paragraph (12) must state—

- (a) why he objects to the admission under section 27 of the 1999 Act of any part of the video recording or recordings disclosed, giving his reasons why it would not be in the interests of justice for the recording or any part of it to be admitted; and
- (b) whether he would agree to the admission of part of the video recording or recordings and, if so, which part or parts.

(15) The court must, before determining the application—

- (a) direct a hearing of the application; and
- (b) allow all the parties to the proceedings to be present and be heard on the application.

(16) The court officer must notify all parties to the proceedings of the decision of the court as soon as may be reasonable after the decision is given.

(17) Any decision varying a special measures direction must state whether the whole or specified parts of the video recording or recordings subject to the application are to be admitted in evidence.

[Note. Formerly rule 8 of the Magistrates' Courts (Special Measures Directions) Rules 2002 and rule 8 of the Crown Court (Special Measures Directions and Directions Prohibiting Cross-examination) Rules 2002. As to the use of video-recorded evidence in chief see also direction IV.40 in the Practice Direction.]

(7) Section 27 was amended by the Courts Act 2003 (c. 39), Schedule 8, paragraph 384(b); it is further amended by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 2, paragraph 73(1), (2) and Schedule 37, Part 4, with effect from a date to be appointed.

Expert evidence in connection with special measures directions

29.8. Any party to proceedings in a magistrates' court or the Crown Court who proposes to adduce expert evidence (whether of fact or opinion) in connection with an application or renewal application for, or for varying or discharging, a special measures direction must, not less than 14 days before the date set for the trial to begin—

- (a) furnish the other party or parties to those proceedings with a statement in writing of any finding or opinion which he proposes to adduce by way of such evidence; and
- (b) where a request is made to him in that behalf by any other party to those proceedings, provide that party also with a copy of (or if it appears to the party proposing to adduce the evidence to be more practicable, a reasonable opportunity to examine) the record of any observation, test, calculation or other procedure on which such finding or opinion is based and any document or other thing or substance in respect of which any such procedure has been carried out.

[Note. Formerly rule 9 of the Magistrates' Courts (Special Measures Directions) Rules 2002 and rule 9 of the Crown Court (Special Measures Directions and Directions Prohibiting Cross-examination) Rules 2002.]

Intermediaries

29.9. The declaration required to be made by an intermediary in accordance with section 29(5) of the Youth Justice and Criminal Evidence Act 1999⁽⁸⁾ 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.”

[Note. Formerly rule 9A of the Magistrates' Courts (Special Measures Directions) Rules 2002 and rule 9A of the Crown Court (Special Measures Directions and Directions Prohibiting Cross-examination) Rules 2002.]

(8) Section 29(5) was amended by the Courts Act 2003 (c. 39), Schedule 8, paragraph 384(d).