
STATUTORY INSTRUMENTS

2010 No. 60

The Criminal Procedure Rules 2010

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.

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 17 (under 18, when the Coroners and Justice Act 2009 comes into force); 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 Act, a witness is eligible for such assistance if—

- (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) *(when the Coroners and Justice Act 2009 comes into force) 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 29.1 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, where the witness—*
 - (i) *is under 17 (under 18, when the Coroners and Justice Act 2009 comes into force), or*
 - (ii) *was under that age when interviewed**whether or not an application for a direction is made;*
- (b) *(when the Coroners and Justice Act 2009 comes into force) under section 22A of the 1999 Act, 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, 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 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*
 - (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, 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).*

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