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STATUTORY INSTRUMENTS

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**2020 No. 759**

**The Criminal Procedure Rules 2020**

**PART 18**

**MEASURES TO ASSIST A WITNESS OR DEFENDANT TO GIVE EVIDENCE**

*GENERAL RULES*

**When this Part applies**

**18.1.** This Part applies—

- (a) where the court can give a direction (a ‘special measures direction’), under section 19 of the Youth Justice and Criminal Evidence Act 1999(1), on an application or on its own initiative, for any of the following measures—
  - (i) preventing a witness from seeing the defendant (section 23 of the 1999 Act),
  - (ii) allowing a witness to give evidence by live link (section 24 of the 1999 Act(2)),
  - (iii) hearing a witness’ evidence in private (section 25 of the 1999 Act(3)),
  - (iv) dispensing with the wearing of wigs and gowns (section 26 of the 1999 Act),
  - (v) admitting video recorded evidence (sections 27 and 28 of the 1999 Act(4)),
  - (vi) questioning a witness through an intermediary (section 29 of the 1999 Act(5)),
  - (vii) using a device to help a witness communicate (section 30 of the 1999 Act);
- (b) where the court can vary or discharge such a direction, under section 20 of the 1999 Act(6);
- (c) where the court can give, vary or discharge a direction (a ‘defendant’s evidence direction’) for a defendant to give evidence—
  - (i) by live link, under section 33A of the 1999 Act(7), or
  - (ii) through an intermediary, under sections 33BA and 33BB of the 1999 Act(8);
- (d) where the court can—

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(1) 1999 c. 23.  
(2) 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).  
(3) 1999 c. 23; section 25 was amended by paragraphs 1 and 3 of the Schedule to S.I. 2013/554 and section 46 of the Modern Slavery Act 2015 (c. 30).  
(4) 1999 c. 23; section 27 was amended by paragraph 384 of Schedule 8 to the Courts Act 2003 (c. 39), paragraph 73 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and sections 102(2), 103(1), (3), (4) and (5), 177(1) and (2) and 178 of, and paragraph 73 of Schedule 21, paragraph 23 of Schedule 22 and Part 3 of Schedule 23 to, the Coroners and Justice Act 2009 (c. 25).  
(5) 1999 c. 23; section 29 was amended by paragraph 384(d) of Schedule 8 to the Courts Act 2003 (c. 39).  
(6) 1999 c. 23; section 20(6) was amended by paragraph 384(a) of Schedule 8 to the Courts Act 2003 (c. 39).  
(7) 1999 c. 23; section 33A was inserted by section 47 of the Police and Justice Act 2006 (c. 48).  
(8) 1999 c. 23; sections 33BA and 33BB are inserted by section 104 of the Coroners and Justice Act 2009 (c. 25), with effect from a date to be appointed.

- (i) make a witness anonymity order, under section 86 of the Coroners and Justice Act 2009<sup>(9)</sup>, or
- (ii) vary or discharge such an order, under section 91, 92 or 93 of the 2009 Act;
- (e) where the court can give or discharge a direction (a ‘live link direction’), on an application or on its own initiative, for a witness to give evidence by live link under—
  - (i) section 32 of the Criminal Justice Act 1988<sup>(10)</sup>, or
  - (ii) sections 51 and 52 of the Criminal Justice Act 2003<sup>(11)</sup>; and
- (f) where the court can exercise any other power it has to give, vary or discharge a direction for a measure to help a witness give evidence.

### Meaning of ‘witness’

**18.2.** In this Part, ‘witness’ means anyone (other than a defendant) for whose benefit an application, direction or order is made.

*[Note. At the end of this Part is a summary of the circumstances in which a witness or defendant may be eligible for the assistance of one of the measures to which this Part applies.]*

### Making an application for a direction or order

**18.3.** A party who wants the court to exercise its power to give or make a direction or order must—

- (a) apply in writing as soon as reasonably practicable, and in any event not more than—
  - (i) 20 business days after the defendant pleads not guilty, in a magistrates’ court, or
  - (ii) 10 business days after the defendant pleads not guilty, in the Crown Court; and
- (b) serve the application on—
  - (i) the court officer, and
  - (ii) each other party.

*[Note. See also rule 18.10 (Content of application for a special measures direction), rule 18.15 (Content of application for a defendant’s evidence direction), rule 18.19 (Content and conduct of application for a witness anonymity order) and rule 18.24 (Content of application for a live link direction).]*

*The Practice Direction sets out forms for use in connection with—*

- (a) *an application under rule 18.10 for a special measures direction;*
- (b) *an application under rule 18.24 for a live link direction (otherwise than as a special measures direction).]*

### Decisions and reasons

**18.4.—(1)** A party who wants to introduce the evidence of a witness who is the subject of an application, direction or order must—

- (a) inform the witness of the court’s decision as soon as reasonably practicable; and

<sup>(9)</sup> 2009 c. 25.

<sup>(10)</sup> 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.

<sup>(11)</sup> 2003 c. 44.

- (b) explain to the witness the arrangements that as a result will be made for him or her to give evidence.
- (2) The court must—
  - (a) promptly determine an application; and
  - (b) allow a party sufficient time to comply with the requirements of—
    - (i) paragraph (1), and
    - (ii) the code of practice issued under section 32 of the Domestic Violence, Crime and Victims Act 2004<sup>(12)</sup>.
- (3) The court must announce, at a hearing in public before the witness gives evidence, the reasons for a decision—
  - (a) to give, make, vary or discharge a direction or order; or
  - (b) to refuse to do so.

*[Note. See sections 20(5), 33A(8) and 33BB(4) of the Youth Justice and Criminal Evidence Act 1999 and sections 51(8) and 52(7) of the Criminal Justice Act 2003<sup>(13)</sup>.*

*Under section 32 of the Domestic Violence, Crime and Victims Act 2004, the Secretary of State for Justice must issue a code of practice as to the services to be provided by specified persons to a victim of criminal conduct.]*

#### **Court's power to vary requirements under this Part**

- 18.5.**—(1) The court may—
- (a) shorten or extend (even after it has expired) a time limit under this Part; and
  - (b) allow an application or representations to be made in a different form to one set out in the Practice Direction, or to be made orally.
- (2) A person who wants an extension of time must—
- (a) apply when serving the application or representations for which it is needed; and
  - (b) explain the delay.

#### **Custody of documents**

- 18.6.** Unless the court otherwise directs, the court officer may—
- (a) keep a written application or representations; or
  - (b) arrange for the whole or any part to be kept by some other appropriate person, subject to any conditions that the court may impose.

#### **Declaration by intermediary**

- 18.7.**—(1) This rule applies where—
- (a) a video recorded interview with a witness is conducted through an intermediary; or
  - (b) the court directs the examination of a witness or defendant through an intermediary.
- (2) An intermediary must make a declaration—
- (a) before such an interview begins; and

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<sup>(12)</sup> 2004 c. 28; section 32 was amended by article 8 of, and paragraph 10 of the Schedule to, [S.I. 2007/2128](#).

<sup>(13)</sup> 2003 c. 44.

(b) before the examination begins (even if such an interview with the witness was conducted through the same intermediary).

(3) The declaration must be in these terms—

“I solemnly, sincerely and truly declare [*or I swear by Almighty God*] 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.”