
STATUTORY INSTRUMENTS

2020 No. 759

The Criminal Procedure Rules 2020

PART 18

[^{F1}Measures to help a witness or defendant to give evidence or otherwise participate]

F1 Pt. 18 heading substituted (5.4.2021) by [The Criminal Procedure \(Amendment\) Rules 2021 \(S.I. 2021/40\)](#), rules 2(b), 9(a)

Modifications etc. (not altering text)

C1 Pt. 18 modified (5.4.2021) by [The Criminal Procedure \(Amendment\) Rules 2021 \(S.I. 2021/40\)](#), rules 2(c), 10

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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);
- [F5(c) where the court can give, vary or discharge a direction (a ‘defendant’s evidence direction’) for a defendant to give evidence through an intermediary, under sections 33BA and 33BB of the 1999 Act;]
- (d) where the court can—
- (i) make a witness anonymity order, under section 86 of the Coroners and Justice Act 2009(7), or
 - (ii) vary or discharge such an order, under section 91, 92 or 93 of the 2009 Act;
- [F6[F7(e)] where the court can—
- (i) appoint an intermediary to facilitate a defendant’s effective participation in that defendant’s trial, when the defendant gives evidence or at any other time, or
 - (ii) vary or discharge such an appointment; and
- [F8(f)] where the court can exercise any other power it has to give, make, vary, rescind, discharge or revoke a direction for a measure to help a witness to give evidence or to help a defendant to participate in that defendant’s trial.]

[F9[Note. At the end of this Part there 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.]]

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| F5 | Rule 18.1(c) substituted (15.8.2022) by The Criminal Procedure (Amendment No. 2) Rules 2022 (S.I. 2022/815) , rules 2(g), 12(a)(i) |
| F6 | Rule 18.1(f)(g) substituted for rule 18.1(f) (5.4.2021) by The Criminal Procedure (Amendment) Rules 2021 (S.I. 2021/40) , rules 2(b), 9(b)(ii) |
| F7 | Original rule 18.1(e) omitted and rule 18.1(f) renumbered as rule 18.1(e) (15.8.2022) by The Criminal Procedure (Amendment No. 2) Rules 2022 (S.I. 2022/815) , rules 2(g), 12(a)(i)(iii) |
| F8 | Rule 18.1(g) renumbered as rule 18.1(f) (15.8.2022) by The Criminal Procedure (Amendment No. 2) Rules 2022 (S.I. 2022/815) , rules 2(g), 12(a)(iii) |

- (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) 2009 c. 25.

F9 Rule 18.1 Note inserted (5.4.2021) by [The Criminal Procedure \(Amendment\) Rules 2021 \(S.I. 2021/40\)](#), rules 2(b), **9(b)(iii)**

Commencement Information

I1 Rule 18.1 in force at 5.10.2020, see Preamble

[^{F10}Meaning of ‘witness’ and ‘live link’

18.2. In this Part—

- (a) witness’ means anyone (other than a defendant) for whose benefit an application, direction or order is made; and
- (b) ‘live link’, in relation to a witness, means a live television link or other arrangement by which a witness who is absent from the courtroom or other place where the proceedings are being held is able to see and hear a person there and to be seen and heard by—
 - (i) the judge or justices (or both) and the jury (if there is one),
 - (ii) legal representatives acting in the proceedings, and
 - (iii) any interpreter or other person appointed (in pursuance of the direction or otherwise) to assist the witness.

[Note. See section 24(8) of the Youth Justice and Criminal Evidence Act 1999 .]]

F10 Rule 18.2 substituted (15.8.2022) by [The Criminal Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/815\)](#), rules 2(g), **12(b)**

[^{F11}Meaning of ‘intermediary’ and ‘intermediary’s report’

18.3. In this Part

- (a) ‘intermediary’ means a person who is—
 - (i) approved by the court for the purposes of section 29 of the Youth Justice and Criminal Evidence Act 1999 (Examination of witness through intermediary),
 - (ii) approved by the court for the purposes of section 33BA of the 1999 Act (Examination of accused through intermediary),
 - (iii) asked to assess a defendant’s communication needs, or
 - (iv) appointed by the court to facilitate a defendant’s effective participation in the trial, when the defendant gives evidence or at any other time, where otherwise that defendant’s communication needs would impede such participation; and
- (b) a reference to ‘an intermediary’s report’ means a report by such a person which complies with [^{F12}rule 18.28].]

F11 Original rule 18.3 renumbered as rule 18. 4 and new rule 18.3 inserted (5.4.2021) by [The Criminal Procedure \(Amendment\) Rules 2021 \(S.I. 2021/40\)](#), rules 2(b), **9(e)(f)**

F12 Words in [rule 18.3\(b\)](#) substituted (15.8.2022) by [The Criminal Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/815\)](#), rules 2(g), **12(c)**

Making an application for a direction or order

[^{F13}18.4]. 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) [^{F14}, [^{F15} and rule 18.23] ((Appointment of intermediary to facilitate a defendant’s participation)].

^{F16}]

<p>F13 Rule 18.3 renumbered as rule 18.4 (5.4.2021) by The Criminal Procedure (Amendment) Rules 2021 (S.I. 2021/40), rules 2(b), 9(e)</p> <p>F14 Words in rule 18.4 Note substituted (5.4.2021) by The Criminal Procedure (Amendment) Rules 2021 (S.I. 2021/40), rules 2(b), 9(g)</p> <p>F15 Words in rule 18.4 Note substituted (15.8.2022) by The Criminal Procedure (Amendment No. 2) Rules 2022 (S.I. 2022/815), rules 2(g), 12(d)(i)</p> <p>F16 Words in rule 18.4 Note omitted (2.10.2023) by virtue of The Criminal Procedure (Amendment No. 2) Rules 2023 (S.I. 2023/786), rule 1, Sch. para. 13</p> <hr/> <p>Commencement Information</p> <p>I2 Rule 18.4 in force at 5.10.2020, see Preamble, (as renumbered (5.4.2021) by S.I. 2021/40, rules 2(b), 9(e))</p>
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Decisions and reasons

[^{F17}18.5].—(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
 - (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(8).

(3) The court must announce, at a hearing in public before the witness gives evidence [^{F18}or the defendant’s trial begins (as the case may be)], the reasons for a decision—

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

- (a) to give, make, vary or discharge a direction or order; or
- (b) to refuse to do so.

[Note. See sections 20(5)^{F19}... 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(9).

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.]

- F17** Rule 18.4 renumbered as rule 18.5 (5.4.2021) by [The Criminal Procedure \(Amendment\) Rules 2021 \(S.I. 2021/40\)](#), rules 2(b), 9(e)
- F18** Words in rule 18.5(3) inserted (5.4.2021) by [The Criminal Procedure \(Amendment\) Rules 2021 \(S.I. 2021/40\)](#), rules 2(b), 9(h)
- F19** Word in rule 18.5 omitted (15.8.2022) by virtue of [The Criminal Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/815\)](#), rules 2(g), 12(e)

Commencement Information

- I3** Rule 18.5 in force at 5.10.2020, see Preamble, (as renumbered 5.4.2021 by [S.I. 2021/40](#), rules 2(b), 9(e))

Court's power to vary requirements under this Part

- [^{F20}18.6].—(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 [^{F21}issued under] 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.

- F20** Rule 18.5 renumbered as rule 18.6 (5.4.2021) by [The Criminal Procedure \(Amendment\) Rules 2021 \(S.I. 2021/40\)](#), rules 2(b), 9(e)
- F21** Words in rule 18.6(1)(b) substituted (2.10.2023) by [The Criminal Procedure \(Amendment No. 2\) Rules 2023 \(S.I. 2023/786\)](#), rule 1, [Sch. para. 14](#)

Commencement Information

- I4** Rule 18.6 in force at 5.10.2020, see Preamble, (as renumbered 5.4.2021 by [S.I. 2021/40](#), rules 2(b), 9(e))

Custody of documents

- [^{F22}18.7]. 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.

F22 Original rule 18.7 omitted and rule 18.6 renumbered as rule 18.7 (5.4.2021) by [The Criminal Procedure \(Amendment\) Rules 2021 \(S.I. 2021/40\)](#), rules 2(b), **9(d)(e)**

Commencement Information

I5 Rule 18.7 in force at 5.10.2020, see Preamble, (as renumbered 5.4.2021 by [S.I. 2021/40](#), rules 2(b), **9(e)**)

SPECIAL MEASURES DIRECTIONS

Exercise of court's powers

18.8.—^{F23}(1) The court may decide whether to give, vary or discharge a special measures direction—

- (a) at a hearing, in public or in private, or without a hearing; and
- (b) in a party's absence, if that party—
 - (i) applied for the direction, variation or discharge, or
 - (ii) has had at least 10 business days in which to make representations.

^{F24}(2) Where a direction provides for evidence to be admitted under section 28 of the Youth Justice and Criminal Evidence Act 1999 (Video recorded cross-examination or re-examination) the court must set a timetable that provides for—

- (a) the date of any ground rules hearing under rule 3.9;
- (b) the date on which the cross-examination and any re-examination will be recorded; and
- (c) the date by which any application under section 28(5) of the 1999 Act must be made for a direction for further cross-examination or re-examination.]

F23 Rule 18.8 renumbered as rule 18.8(1) (2.10.2023) by [The Criminal Procedure \(Amendment No. 2\) Rules 2023 \(S.I. 2023/786\)](#), rules 1, **9(a)(i)**

F24 Rule 18.8(2) inserted (2.10.2023) by [The Criminal Procedure \(Amendment No. 2\) Rules 2023 \(S.I. 2023/786\)](#), rules 1, **9(a)(ii)**

Commencement Information

I6 Rule 18.8 in force at 5.10.2020, see Preamble

Special measures direction without application

18.9.—(1) This rule applies where—

- (a) a party notifies the court that a witness is eligible for assistance under section 16 or section 17 of the Youth Justice and Criminal Evidence Act 1999;
- (b) the notice is given at—
 - (i) a preparation for trial hearing in a magistrates' court, or
 - (ii) a plea and trial preparation hearing in the Crown Court; and
- (c) no other party opposes the giving of a special measures direction for the benefit of that witness.

(2) The court may exercise its power to give a special measures direction without requiring an application under rule 18.10.

- (3) The party who gives the notice must—
- (a) provide any information that the court may need to assess—
 - (i) the measure or measures likely to maximise so far as practicable the quality of the witness' evidence, and
 - (ii) the witness' own views; and
 - (b) where a direction provides for video recorded evidence to be admitted under section 27^{F25} ... of the Youth Justice and Criminal Evidence Act 1999, as soon as reasonably practicable serve such evidence on—
 - (i) the court officer, and
 - (ii) each other party.

[Note. Under sections 21 and 22 of the Youth Justice and Criminal Evidence Act 1999, a 'child witness' is one who is under 18, and a 'qualifying witness' is one who was a child witness when interviewed.

Under those sections, the 'primary rule' requires the court to give a direction—

- (a) *for the evidence of a child witness or of a qualifying witness to be admitted—*
 - (i) *by means of a video recording of an interview with the witness, in the place of examination-in-chief, and*
 - (ii) *after that, by live link; or*
- (b) *if one or both of those measures is not taken, for the witness while giving evidence to be screened from seeing the defendant.*

The primary rule always applies unless—

- (a) *the witness does not want it to apply, and the court is satisfied that to omit a measure usually required by that rule would not diminish the quality of the witness' evidence; or*
- (b) *the court is satisfied that to direct one of the measures usually required by that rule would not be likely to maximise, so far as practicable, the quality of the witness' evidence.]*

F25 Words in rule 18.9(3)(b) omitted (2.10.2023) by virtue of [The Criminal Procedure \(Amendment No. 2\) Rules 2023 \(S.I. 2023/786\)](#), rules 1, **9(b)**

Commencement Information

I7 Rule 18.9 in force at 5.10.2020, see Preamble

Content of application for a special measures direction

- 18.10.** An applicant for a special measures direction must—
- (a) explain how the witness is eligible for assistance;
 - (b) explain why special measures would be likely to improve the quality of the witness' evidence;
 - (c) propose the measure or measures that in the applicant's opinion would be likely to maximise, so far as practicable, the quality of that evidence;
 - (d) report any views that the witness has expressed about—
 - (i) his or her eligibility for assistance,
 - (ii) the likelihood that special measures would improve the quality of his or her evidence, and

- (iii) the measure or measures proposed by the applicant;
- (e) in a case in which a child witness or a qualifying witness does not want the primary rule to apply, provide any information that the court may need to assess the witness' views;
- (f) in a case in which the applicant proposes that the witness should give evidence by live link—
 - (i) identify someone to accompany the witness while the witness gives evidence,
 - (ii) name that person, if possible, and
 - (iii) explain why that person would be an appropriate companion for the witness, including the witness' own views;
- (g) in a case in which the applicant proposes the admission of video recorded evidence, identify—
 - (i) the date and duration of the recording, and
 - (ii) which part the applicant wants the court to admit as evidence, if the applicant does not want the court to admit all of it;
- (h) attach any other material on which the applicant relies; and
- (i) if the applicant wants a hearing, ask for one, and explain why it is needed.

F26 ...

F26 Rule 18.10 Note omitted (2.10.2023) by virtue of [The Criminal Procedure \(Amendment No. 2\) Rules 2023 \(S.I. 2023/786\)](#), rule 1, [Sch. para. 15](#)

Commencement Information

I8 Rule 18.10 in force at 5.10.2020, see Preamble

Application to vary or discharge a special measures direction

- 18.11.**—(1) A party who wants the court to vary or discharge a special measures 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 (or last varied, if applicable);
 - (b) explain why the direction should be varied or discharged; and
 - (c) ask for a hearing, if the applicant wants one, and explain why it is needed.

[Note. Under section 20 of the Youth Justice and Criminal Evidence Act 1999, the court can vary or discharge a special measures direction—

- (a) *on application, if there has been a material change of circumstances; or*
- (b) *on the court's own initiative.]*

Commencement Information

I9 Rule 18.11 in force at 5.10.2020, see Preamble

Application containing information withheld from another party

18.12.—(1) This rule applies where—

- (a) an applicant serves an application for a special measures direction, or for its variation or discharge; and
- (b) the application includes information that the applicant thinks ought not be revealed to another party.

(2) The applicant must—

- (a) omit that information from the part of the application that is served on that other party;
- (b) mark the other part to show that, unless the court otherwise directs, it is only for the court; and
- (c) in that other part, explain why the applicant has withheld that information from that other party.

(3) Any hearing of an application to which this rule applies—

- (a) must be in private, unless the court otherwise directs; and
- (b) if the court so directs, may be, wholly or in part, in the absence of a party from whom information has been withheld.

(4) At any hearing of an application to which this rule applies—

- (a) the general rule is that the court must consider, in the following sequence—
 - (i) representations first by the applicant and then by each other party, in all the parties' presence, and then
 - (ii) further representations by the applicant, in the absence of a party from whom information has been withheld; but
- (b) the court may direct other arrangements for the hearing.

[Note. See section 20 of the Youth Justice and Criminal Evidence Act 1999.]

Commencement Information

I10 Rule 18.12 in force at 5.10.2020, see Preamble

Representations in response

18.13.—(1) This rule applies where a party wants to make representations about—

- (a) an application for a special measures direction;
- (b) an application for the variation or discharge of such a direction; or
- (c) a direction, variation or discharge that the court proposes on its own initiative.

(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 10 business days after, as applicable—
 - (i) service of the application, or
 - (ii) notice of the direction, variation or discharge that the court proposes; and
- (c) ask for a hearing, if that party wants one, and explain why it is needed.
- (3) Where representations include information that the person making them thinks ought not be revealed to another party, that person must—
 - (a) omit that information from the representations served on that other party;
 - (b) mark the information to show that, unless the court otherwise directs, it is only for the court; and
 - (c) with that information include an explanation of why it has been withheld from that other party.
- (4) Representations against a special measures direction must explain, as appropriate—
 - (a) why the witness is not eligible for assistance;
 - (b) if the witness is eligible for assistance, why—
 - (i) no special measure would be likely to improve the quality of the witness' evidence,
 - (ii) the proposed measure or measures would not be likely to maximise, so far as practicable, the quality of the witness' evidence, or
 - (iii) the proposed measure or measures might tend to inhibit the effective testing of that evidence; and
 - (c) in a case in which the admission of video recorded evidence is proposed, why it would not be in the interests of justice for the recording, or part of it, to be admitted as evidence.
- (5) Representations against the variation or discharge of a special measures direction must explain why it should not be varied or discharged.

[Note. Under sections 21 and 22 of the Youth Justice and Criminal Evidence Act 1999, where the witness is a child witness or a qualifying witness the special measures that the court usually must direct must be treated as likely to maximise, so far as practicable, the quality of the witness' evidence, irrespective of representations to the contrary.]

Commencement Information

III Rule 18.13 in force at 5.10.2020, see Preamble

DEFENDANT'S EVIDENCE DIRECTIONS

Exercise of court's powers

18.14. The court may decide whether to give, vary or discharge a defendant's evidence direction—

- (a) at a hearing, in public or in private, or without a hearing; and
- (b) in a party's absence, if that party—
 - (i) applied for the direction, variation or discharge, or
 - (ii) has had at least 10 business days in which to make representations.

Commencement Information

112 Rule 18.14 in force at 5.10.2020, see Preamble

Content of application for a defendant's evidence direction

18.15. An applicant for a defendant's evidence direction must—

(a) explain how the proposed direction meets the conditions prescribed by the Youth Justice and Criminal Evidence Act 1999; ^[F27]and]

^[F28](b)] ask for a hearing, if the applicant wants one, and explain why it is needed.

[Note. See ^[F29]section] 33BA of the Youth Justice and Criminal Evidence Act 1999.]

F27 Word in rule 18.15(a) inserted (15.8.2022) by [The Criminal Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/815\)](#), rules 2(g), **12(f)(i)**

F28 Original rule 18.15(b) omitted and rule 18.15(c) renumbered as rule 18.15(b) (15.8.2022) by [The Criminal Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/815\)](#), rules 2(g), **12(f)(ii)(iii)**

F29 Word in rule 18.15 substituted (15.8.2022) by [The Criminal Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/815\)](#), rules 2(g), **12(f)(iv)**

Commencement Information

113 Rule 18.15 in force at 5.10.2020, see Preamble

Application to vary or discharge a defendant's evidence direction

18.16.—(1) A party who wants the court to vary or discharge a defendant's evidence 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—

^[F30](a)] on an application to discharge a direction for an intermediary, explain why it is no longer necessary in order to ensure that the defendant receives a fair trial;

^[F30](b)] on an application to vary a direction for an intermediary, explain why it is necessary for the direction to be varied in order to ensure that the defendant receives a fair trial; and

^[F30](c)] ask for a hearing, if the applicant wants one, and explain why it is needed.

[Note. See ^[F31]section] 33BB of the Youth Justice and Criminal Evidence Act 1999.]

F30 Original rule 18.16(a) omitted and rule 18.16(2)(b)(c)(d) renumbered as rule 18.16(2)(a)(b)(c) (15.8.2022) by [The Criminal Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/815\)](#), rules 2(g), **12(g)(i)(ii)**

F31 Word in rule 18.16 substituted (15.8.2022) by [The Criminal Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/815\)](#), rules 2(g), **12(g)(iii)**

Commencement Information

I14 Rule 18.16 in force at 5.10.2020, see Preamble

Representations in response

18.17.—(1) This rule applies where a party wants to make representations about—

- (a) an application for a defendant’s evidence direction;
- (b) an application for the variation or discharge of such a direction; or
- (c) a direction, variation or discharge that the court proposes on its own initiative.

(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 10 business days after, as applicable—
 - (i) service of the application, or
 - (ii) notice of the direction, variation or discharge that the court proposes; and
- (c) ask for a hearing, if that party wants one, and explain why it is needed.

(3) Representations against a direction, variation or discharge must explain why the conditions prescribed by the Youth Justice and Criminal Evidence Act 1999 are not met.

Commencement Information

I15 Rule 18.17 in force at 5.10.2020, see Preamble

WITNESS ANONYMITY ORDERS

Exercise of court’s powers

18.18.—(1) The court may decide whether to make, vary or discharge a witness anonymity order—

- (a) at a hearing (which must be in private, unless the court otherwise directs), or without a hearing (unless any party asks for one); and
- (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 34 (Appeal to the Crown Court) or Part 39 (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; or
- (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.

Commencement Information

I16 Rule 18.18 in force at 5.10.2020, see Preamble

Content and conduct of application for a witness anonymity order

- 18.19.**—(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⁽¹⁰⁾;
 - (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 sections 45, 45A or 46 of the Youth Justice and Criminal Evidence Act 1999⁽¹¹⁾,
 - (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⁽¹²⁾, 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

⁽¹⁰⁾ 2009 c. 25.

⁽¹¹⁾ 1999 c. 23; section 45A was inserted by section 78 of the Criminal Justice and Courts Act 2015 (c. 2).

⁽¹²⁾ 2003 c. 44.

- (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 must consider, 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
 - (c) unless at the prosecutor's request the court otherwise directs.

Commencement Information

I17 Rule 18.19 in force at 5.10.2020, see Preamble

Duty of court officer to notify the Director of Public Prosecutions

18.20. 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.

Commencement Information

I18 Rule 18.20 in force at 5.10.2020, see Preamble

Application to vary or discharge a witness anonymity order

18.21.—(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.]*

Commencement Information

119 Rule 18.21 in force at 5.10.2020, see Preamble

Representations in response

18.22.—(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 10 business 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.

Commencement Information

I20 Rule 18.22 in force at 5.10.2020, see Preamble

F32 ...

F32 Pt. 18 Section heading and words and rules 18.23 to 18.26 omitted (15.8.2022) by virtue of [The Criminal Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/815\)](#), rules 2(g), **12(h)**

F32 ...

[^{F33}INTERMEDIARY FOR A DEFENDANT

F33 Rule 18.27-18.32 and cross-headings inserted (5.4.2021) by [The Criminal Procedure \(Amendment\) Rules 2021 \(S.I. 2021/40\)](#), rules 2(b), **9(k)**

Appointment of intermediary to facilitate a defendant's participation

[^{F34}**18.23**].—(1) The court must exercise its power to appoint an intermediary to facilitate a defendant's effective participation in the trial where—

- (a) the defendant's ability to participate is likely to be diminished by reason of—
 - (i) age, if the defendant is under 18, or
 - (ii) mental disorder (as defined in section 1(2) of the Mental Health Act 1983), a significant impairment of intelligence and social functioning, or a physical disability or disorder; and
- (b) the appointment is necessary for that purpose.

(2) In determining whether such an appointment is necessary, who to appoint and the duration or purpose of the appointment, the court must have regard to—

- (a) the defendant's communication needs as reported to the court;
- (b) the recommendations in any intermediary's report received by the court;
- (c) any views that the defendant has expressed about—
 - (i) receiving the assistance of an intermediary,
 - (ii) other measures or arrangements to facilitate the defendant's effective participation in the trial;
- (d) the likely impact of the defendant's age, if under 18, level of intellectual ability or social functioning on the ability to—
 - (i) give evidence, and
 - (ii) understand what is said and done by the court and other participants;
- (e) the likely impact on such participation and on such understanding of any mental disorder or other significant impairment of intelligence or social functioning;
- (f) the adequacy of arrangements for questioning the defendant in the absence of an intermediary;
- (g) any assistance that the defendant has received in the past—
 - (i) while giving evidence in legal proceedings,

- (ii) while being questioned during the investigation of an alleged offence, or
 - (iii) as a defendant in a criminal case;
 - (h) any assessment of the defendant's health by a mental health practitioner acting independently of the parties to assist the court;
 - (i) any expert medical opinion that the court may have received; and
 - (j) any other matter that the court thinks relevant.
- (3) The court may exercise its power to appoint an intermediary—
- (a) for the duration of every hearing that the defendant is due to attend;
 - (b) for the duration of any specified such hearing or hearings, or for the duration of a specified part of such a hearing; or
 - (c) for a specified purpose during a hearing.
- (4) Unless the court otherwise directs, the appointment of an intermediary extends to facilitating the defendant's communication with that defendant's legal representatives for the duration and for the purpose of the appointment.
- (5) The court may decide whether to appoint an intermediary to facilitate a defendant's effective participation in the trial and whether to vary or discharge any such appointment—
- (a) on application or on the court's own initiative;
 - (b) at a hearing, in public or in private, or without a hearing; and
 - (c) in a party's absence, if that party—
 - (i) applied for the appointment, variation or discharge, or
 - (ii) has had at least 10 business days in which to make representations.
- (6) The court must not exercise its power to vary or discharge a direction for the appointment of an intermediary unless satisfied that—
- (a) since the direction was made—
 - (i) the defendant's communication needs have changed materially, or
 - (ii) any other material circumstance has changed materially; and
 - (b) the defendant will be able to participate effectively in the trial despite the variation or discharge of the direction.

F34 Original rule 18.23 omitted and rule 18.27 renumbered as rule 18.23 (15.8.2022) by virtue of [The Criminal Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/815\)](#), rules 2(g), **12(h)(i)**

Application to vary or discharge the appointment of an intermediary for a defendant

[^{F35}18.24].—(1) A party who wants the court to vary or discharge the appointment of an intermediary to facilitate a defendant's effective participation in the trial 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 how the criteria listed in rule ^{F36}rule 18.23(6)] are met (variation or discharge of appointment); and
- (b) ask for a hearing, if the applicant wants one, and explain why it is needed.

F35 Original rule 18.24 omitted and rule 18.28 renumbered as rule 18.24 (15.8.2022) by virtue of [The Criminal Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/815\)](#), rules 2(g), **12(h)(i)**

F36 Words in rule 18.24 substituted (15.8.2022) by virtue of [The Criminal Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/815\)](#), rules 2(g), **12(j)**

Representations in response to application or proposal

- ^{F37}**18.25**].—(1) This rule applies where a party wants to make representations about—
- (a) an application or proposal for the appointment of an intermediary to facilitate a defendant’s effective participation in the trial; or
 - (b) an application or proposal for the variation or discharge of such an appointment.
- (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 10 business days after, as applicable—
 - (i) service of the application, or
 - (ii) notice of the appointment, variation or discharge that the court proposes; and
 - (c) ask for a hearing, if that party wants one, and explain why it is needed.
- (3) Representations against such an appointment, variation or discharge must explain why the criteria that apply are not met.

F37 Original rule 18.25 omitted and rule 18.29 renumbered as rule 18.25 (15.8.2022) by virtue of [The Criminal Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/815\)](#), rules 2(g), **12(h)(i)**

DUTIES OF INTERMEDIARIES

Intermediary’s duty to the court

- ^{F38}**18.26**].—(1) This rule applies to an intermediary who accepts—
- (a) approval by the court for the purposes of section 29 of the Youth Justice and Criminal Evidence Act 1999 (Examination of witness through intermediary);
 - (b) approval by the court for the purposes of section 33BA of the 1999 Act (Examination of accused through intermediary); or
 - (c) appointment by the court to facilitate a defendant’s effective participation in the trial, when the defendant gives evidence or at any other time.
- (2) The intermediary must help the court to achieve the overriding objective—
- (a) to the best of the intermediary’s skill and understanding by—
 - (i) communicating to the witness or defendant (as the case may be) questions put to them,

- (ii) communicating to the questioner and the court the replies, and
- (iii) explaining such questions and answers so that they can be understood;
- (b) by assessing continually the witness' or the defendant's (as the case may be) ability to participate effectively and intervening if necessary;
- (c) where the intermediary is appointed to facilitate a defendant's effective participation, by explaining to the defendant, in terms the defendant can understand, what is said and done by the court and other participants; and
- (d) by actively assisting the court in fulfilling its duties under rule 3.2 (Case management; The duty of the court) and rule 3.9 (Case management; Ground rules hearing), in particular by—
 - (i) complying with directions made by the court, and
 - (ii) at once informing the court of any significant failure (by the intermediary or another) to take any step required by such a direction.
- (3) This duty overrides any obligation to the witness or to the defendant (as the case may be), or to the person by whom the intermediary is paid.

F38 Original rule 18.26 omitted and rule 18.30 renumbered as rule 18.26 (15.8.2022) by virtue of [The Criminal Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/815\)](#), rules 2(g), **12(h)(i)**

Declaration by intermediary

- [^{F39}**18.27**].—(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) The intermediary must make a declaration—
- (a) before such an interview begins; and
 - (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, or in any corresponding terms that the intermediary declares to be binding—

“I swear by Almighty God [*or* I solemnly, sincerely and truly declare and affirm] that I shall faithfully communicate questions and answers and make true explanation of all matters and things required of me according to the best of my skill and understanding.”

F39 Rule 18.31 renumbered as rule 18.27 (15.8.2022) by virtue of [The Criminal Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/815\)](#), rules 2(g)(i), **12(i)**

Content of intermediary's report

- [^{F40}**18.28**].—(1) An intermediary's report must, in every case—
- (a) give details of the intermediary's qualifications, relevant experience and any accreditation;
 - (b) identify the commissioner of the report;
 - (c) identify those from whom the intermediary has obtained information material to the report;
 - (d) list the documents received or inspected by the intermediary which contained such information and give an indication of their content;

- (e) give the date or dates on which the intermediary met the witness or defendant, as the case may be, for the purpose of preparing the report;
 - (f) describe the nature and duration of the intermediary’s assessment, or assessments, of the witness or defendant;
 - (g) by reference to examples drawn from the intermediary’s assessment of the witness or defendant explain why in this particular case intermediary assistance is necessary;
 - (h) include an evaluation of—
 - (i) the impact of any condition or conditions which, whether in isolation or together, may adversely affect the witness’ or the defendant’s ability to communicate, and
 - (ii) the extent, if any, to which that impact may be exacerbated by the trial;
 - (i) if the intermediary is not able to reach an evaluation without qualifying it, state the qualification;
 - (j) report the views of the witness or defendant, as the case may be, on receiving the assistance of an intermediary;
 - (k) include in a summary of the intermediary’s conclusions any recommendation, with reasons, for—
 - (i) the approval or appointment of an intermediary,
 - (ii) the manner and duration of any questioning of the witness or defendant, as the case may be, and
 - (iii) arrangements for the way in which the intermediary, if approved or appointed, should participate; and
 - (l) contain a statement that the intermediary—
 - (i) understands an intermediary’s duty to the court, and
 - (ii) will comply with that duty if approved or appointed.
- (2) Where the intermediary is asked to evaluate a defendant’s communication needs the report must also—
- (a) include an evaluation of the extent to which any measures or arrangements beside the appointment of an intermediary will facilitate the defendant’s effective participation in the trial; and
 - (b) in the summary of the intermediary’s conclusions include any recommendation, with reasons, for—
 - (i) the duration and purpose of any appointment of an intermediary, and
 - (ii) other measures or arrangements to help the defendant to participate effectively in the trial.]

F40 Rule 18.32 renumbered as rule 18.28 (15.8.2022) by virtue of [The Criminal Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/815\)](#), rules 2(g)(i), **12(i)**

Representations in response to application or proposal

^{F41}**18.29.**

F41 Rule 18.29 renumbered as rule 18.25 (15.8.2022) by virtue of [The Criminal Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/815\)](#), rules 2(g), **12(h)(i)**

Intermediary's duty to the court

F42 18.30.

F42 Rule 18.30 renumbered as rule 18.26 (15.8.2022) by virtue of [The Criminal Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/815\)](#), rules 2(g), **12(h)(i)**

Declaration by intermediary

F43 18.31.

F43 Rule 18.31 renumbered as rule 18.27 (15.8.2022) by virtue of [The Criminal Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/815\)](#), rules 2(g), **12(h)(i)**

Content of intermediary's report

18.32. ^{F44}

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(13), 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(14) 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 ^{F45} or other offence specified by the Act], 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.*

(13) 1999 c. 23.

(14) 1999 c. 23; section 17 was amended by section 99 of the Coroners and Justice Act 2009 (c. 25), paragraphs 1 and 2 of the Schedule to S.I. 2013/554 and section 46 of the Modern Slavery Act 2015 (c. 30).

Section 28 of the 1999 Act (video recorded cross-examination or re-examination) is not yet [^{F46}fully] 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(**15**), where the witness—
 - (i) is under 18, or
 - (ii) was under that age when interviewedwhether or not an application for a direction is made;
- (b) under section 22A of the 1999 Act(**16**), 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

[^{F47}When the Coroners and Justice Act 2009(3) comes into force, under section 33BA of the 1999 Act the court 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; and;
- (b) 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(**17**), 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).

F48

F48

[^{F49}**Intermediary for a defendant**

(15) 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).
(16) 1999 c. 23; section 22A was inserted by section 101 of the Coroners and Justice Act 2009 (c. 25).
(17) 2009 c. 25.

Changes to legislation: There are currently no known outstanding effects for the
The Criminal Procedure Rules 2020, PART 18. (See end of Document for details)

In order to ensure the defendant's effective participation in his or her trial the court has an inherent power to appoint an intermediary to facilitate that participation, including during the giving of evidence by the defendant.]

- F44** Rule 18.33 renumbered as rule 18.28 (15.8.2022) by virtue of [The Criminal Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/815\)](#), rules 2(g), **12(h)(i)**
- F45** Words in Pt. 18 inserted (15.8.2022) by [The Criminal Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/815\)](#), rules 2(g), **12(k)(i)**
- F46** Word in Pt. 18 inserted (15.8.2022) by [The Criminal Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/815\)](#), rules 2(g), **12(k)(i)**
- F47** Words in Pt. 18 substituted (15.8.2022) by [The Criminal Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/815\)](#), rules 2(g), **12(k)(ii)**
- F48** Words in Pt. 18 omitted (15.8.2022) by virtue of [The Criminal Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/815\)](#), rules 2(g), **12(k)(iii)**
- F49** Words in Pt. 18 inserted (5.4.2021) by [The Criminal Procedure \(Amendment\) Rules 2021 \(S.I. 2021/40\)](#), rules 2(b), **9(m)(ii)**

Changes to legislation:

There are currently no known outstanding effects for the The Criminal Procedure Rules 2020, PART 18.