
STATUTORY INSTRUMENTS

2020 No. 759

The Criminal Procedure Rules 2020

PART 23

RESTRICTION ON CROSS-EXAMINATION BY A DEFENDANT

APPLICATION TO PROHIBIT CROSS-EXAMINATION

Exercise of court's powers

23.3.—(1) The court may decide whether to impose or discharge a prohibition against cross-examination under section 36 of the Youth Justice and Criminal Evidence Act 1999—

- (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 prohibition or discharge, or
 - (ii) has had at least 10 business days in which to make representations.

(2) The court must announce, at a hearing in public before the witness gives evidence, the reasons for a decision—

- (a) to impose or discharge such a prohibition; or
- (b) to refuse to do so.

[Note. See section 37 of the Youth Justice and Criminal Evidence Act 1999(1).]

Application to prohibit cross-examination

23.4.—(1) This rule applies where under section 36 of the Youth Justice and Criminal Evidence Act 1999 the prosecutor wants the court to prohibit the cross-examination of a witness by a defendant in person.

- (2) The prosecutor 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,
 - (ii) the defendant who is the subject of the application, and
 - (iii) any other defendant, unless the court otherwise directs.
- (3) The application must—
 - (a) report any views that the witness has expressed about whether he or she is content to be cross-examined by the defendant in person;

- (b) identify—
 - (i) the nature of the questions likely to be asked, having regard to the issues in the case,
 - (ii) any relevant behaviour of the defendant at any stage of the case, generally and in relation to the witness,
 - (iii) any relationship, of any nature, between the witness and the defendant,
 - (iv) any other defendant in the case who is subject to such a prohibition in respect of the witness, and
 - (v) any special measures direction made in respect of the witness, or for which an application has been made;
- (c) explain why the quality of evidence given by the witness on cross-examination—
 - (i) is likely to be diminished if no such prohibition is imposed, and
 - (ii) would be likely to be improved if it were imposed; and
- (d) explain why it would not be contrary to the interests of justice to impose the prohibition.

[Note. The Practice Direction sets out a form of application for use in connection with this rule.]

Application to discharge prohibition imposed by the court

23.5.—(1) A party who wants the court to discharge a prohibition against cross-examination which the court imposed under section 36 of the Youth Justice and Criminal Evidence Act 1999 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 prohibition was imposed; and
 - (b) ask for a hearing, if the applicant wants one, and explain why it is needed.

[Note. Under section 37 of the Youth Justice and Criminal Evidence Act 1999, the court can discharge a prohibition against cross-examination which it has imposed—

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

Application containing information withheld from another party

23.6.—(1) This rule applies where—

- (a) an applicant serves an application for the court to impose a prohibition against cross-examination, or for the discharge of such a prohibition; 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 37 of the Youth Justice and Criminal Evidence Act 1999.]

Representations in response

- 23.7.**—(1) This rule applies where a party wants to make representations about—
- (a) an application under rule 23.4 for a prohibition against cross-examination;
 - (b) an application under rule 23.5 for the discharge of such a prohibition; or
 - (c) a prohibition 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 prohibition 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 prohibition must explain in what respect the conditions for imposing it are not met.
- (4) Representations against the discharge of a prohibition must explain why it should not be discharged.
- (5) 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.

Court's power to vary requirements

- 23.8.**—(1) The court may—

- (a) shorten or extend (even after it has expired) a time limit under rule 23.4 (Application to prohibit cross-examination), rule 23.5 (Application to discharge prohibition imposed by the court) or rule 23.7 (Representations in response); and
 - (b) allow an application or representations required by any of those rules 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.