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STATUTORY INSTRUMENTS

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**2022 No. 815**

**The Criminal Procedure (Amendment No. 2) Rules 2022**

**Amendments to the Criminal Procedure Rules**

**5. In Part 3 (Case management)—**

(a) in rule 3.1 (When this Part applies), after paragraph (3) insert—

“(4) Rules 3.35 to 3.39 apply where the court can give a live link direction.”;

(b) in rule 3.2 (The duty of the court)—

(i) for paragraphs (4) and (5) substitute—

“(4) Where appropriate live links are available, making use of technology for the purposes of this rule includes giving a live link direction for a person’s participation—

(a) under a power to which rule 3.35 applies (Live link direction: exercise of court’s powers); and

(b) whether an application for such a direction is made or not.”, and

(ii) for the note to the rule substitute—

*“[Note. Under section 51 of the Criminal Justice Act 2003, the court may require or permit any person to take part through a live audio or video link in the pre-trial, trial, sentencing, enforcement and appeal proceedings listed in that section. Under section 52A of the Act(1), a person who takes part in accordance with a live link direction is to be treated as present in court.]”;*

(c) in rule 3.3 (The duty of the parties), for paragraph (2)(e) substitute—

“(e) alerting the court to any reason why—

(i) a live link direction should not be given, or

(ii) such a direction should be varied or rescinded;”;

(d) in rule 3.5 (The court’s case management powers), for paragraph (2)(d) substitute—

“(d) receive applications, notices, representations and information by letter, by live link, by email or by any other means of electronic communication, and conduct a hearing by live link or other such electronic means;”;

(e) in rule 3.32 (Arraigning the defendant on the indictment)—

(i) for the heading to the rule substitute “Arraigning the defendant”,

(ii) for paragraph (1) substitute—

“(1) In order to take the defendant’s plea, the Crown Court must—

(a) if more than one indictment has been preferred or proposed, or more than one draft indictment has been presented where rule 10.3 applies—

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(1) 2003 c. 44; section 52A was inserted by paragraph 1 of Schedule 20 to the Police, Crime, Sentencing and Courts Act 2022 (c. 32).

- (i) identify the indictment or indictments that the prosecutor wants to be read to or placed before the defendant under this rule, and
- (ii) identify any draft indictment, indictment or count in an indictment on which the prosecutor does not want to proceed;
- (b) obtain the prosecutor’s confirmation, in writing or orally—
  - (i) that each indictment (or draft indictment, as the case may be) that the prosecutor wants to be read to or placed before the defendant sets out a statement of each offence that the prosecutor wants the court to try and such particulars of the conduct constituting the commission of each such offence as the prosecutor relies upon to make clear what is alleged, and
  - (ii) of the order in which the prosecutor wants the defendants’ names to be listed in each indictment, if the prosecutor proposes that more than one defendant should be tried at the same time;
- (c) ensure that the defendant is correctly identified by each indictment or draft indictment that the prosecutor wants to be read to or placed before the defendant;
- (d) satisfy itself that each allegation has been explained to the defendant, in terms the defendant can understand (with help, if necessary); and
- (e) in respect of each count on which the prosecutor wants to proceed—
  - (i) read the count aloud to the defendant, or arrange for it to be read aloud or placed before the defendant in writing,
  - (ii) ask whether the defendant pleads guilty or not guilty to the offence charged by that count, and
  - (iii) take the defendant’s plea.”,
- (iii) in paragraph (4), for “the indictment” substitute “an indictment read to or placed before the defendant”, and
- (iv) after paragraph (5) insert—
 

“(6) Unless the court otherwise directs, no further proceedings may be taken on a draft indictment, indictment or count in an indictment on which under this rule the prosecutor chooses not to proceed.”;
- (f) after rule 3.34 (Use of Welsh language at Crown Court trial) insert—

*“LIVE LINKS*

**Live link direction: exercise of court’s powers**

- 3.35.**—(1) The court may exercise its power to give, vary or rescind a live link direction under sections 51 and 52 of the Criminal Justice Act 2003<sup>(2)</sup>—
- (a) at a hearing, in public or in private, or without a hearing; and
  - (b) on an application under rule 3.36 (Content of application for a live link direction) or on its own initiative.
- (2) Whether it acts on an application or on its own initiative, the court must not give, vary or rescind a live link direction unless—

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(2) [2003 c. 44](#); section 51 was substituted by section 200 of, and section 52 was substituted by paragraph 1 of Schedule 20 to, the Police, Crime, Sentencing and Courts Act [2022 \(c. 32\)](#).

- (a) the court is satisfied that it is in the interests of justice to do so; and
- (b) each party and (if applicable) any representative of the youth offending team whose functions are exercisable in relation to a defendant—
  - (i) is present, or
  - (ii) has had an opportunity to make representations.
- (3) In deciding whether to give a live link direction the court must consider—
  - (a) any guidance given by the Lord Chief Justice under section 51(5)(a) of the Criminal Justice Act 2003; and
  - (b) all the circumstances of the case.
- (4) Those circumstances include in particular—
  - (a) the availability of the proposed participant by live link;
  - (b) any potential need for that person to attend in person instead of by live link;
  - (c) any views which that person may have expressed;
  - (d) the suitability of the facilities at the place where that person would take part by live link if the direction were given;
  - (e) that person’s ability to take part effectively if the direction were given (and see paragraph (5));
  - (f) if the proposed direction is for a person to give evidence by live link—
    - (i) the importance of that person’s evidence to the case, and
    - (ii) any potential for the proposed direction to inhibit a party from effectively testing that evidence; and
  - (g) arrangements for members of the public to see and hear proceedings at which a person takes part by live link (and see paragraph (6)).
- (5) In assessing a person’s ability to take part effectively by live link, where that person is a defendant the court must have regard to, among other things—
  - (a) whether that defendant will be represented at the hearing for which the live link is proposed; and
  - (b) what other assistance will be available to that defendant at that hearing (for example, an intermediary).
- (6) In assessing arrangements for members of the public to see and hear proceedings the court must have regard to, among other things, the terms of any direction under section 85A of the Courts Act 2003(3) (Remote observation and recording of proceedings by direction of the court).
- (7) Where the court refuses an application to give, vary or rescind a live link direction the court must announce in public its reasons for doing so.

*[Note. See sections 51, 52, 52A and 53 of the Criminal Justice Act 2003(4).]*

### **Content of application for a live link direction**

**3.36.**—(1) An applicant for a live link direction under section 51 of the Criminal Justice Act 2003 must—

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(3) 2003 c. 44; section 85A was inserted by section 198 of the Police, Crime, Sentencing and Courts Act 2022 (c. 32).  
(4) 2003 c. 44; section 53 was amended by paragraph 1 of Schedule 20 to the Police, Crime, Sentencing and Courts Act 2022 (c. 32).

- (a) apply in writing as soon as reasonably practicable;
  - (b) serve the application on—
    - (i) the court officer, and
    - (ii) each other party; and
  - (c) ask for a hearing of the application, if the applicant wants one, and explain why it is needed.
- (2) The application must—
- (a) specify the hearing or hearings in respect of which the applicant wants the direction to apply;
  - (b) identify each person to whom the applicant wants the direction to apply and specify—
    - (i) each one whom the applicant wants to give evidence by live link, and
    - (ii) each one whom the applicant wants to take part by live link without giving evidence;
  - (c) in respect of each such person, specify the type of live link proposed (either video or audio);
  - (d) unless the court otherwise directs, identify the place where each such person will take part if the direction is given;
  - (e) identify any material circumstances relating to—
    - (i) the availability of the proposed participant by live link,
    - (ii) any potential need for that participant to attend in person, not by live link,
    - (iii) any views which that participant may have expressed,
    - (iv) the suitability of the facilities at the place where that participant would take part by live link if the direction were given,
    - (v) any permission needed from a court or other authority in a place outside the United Kingdom from where, if the direction were given, the participant would take part by live link, and
    - (vi) that participant’s ability to take part effectively if the direction were given;
  - (f) if the proposed direction is for a person to give evidence by live link, identify any material circumstances relating to—
    - (i) the importance of that person’s evidence to the case, and
    - (ii) any potential for the proposed direction to inhibit a party from effectively testing that evidence;
  - (g) explain why it is in the interests of justice for each proposed participant by live link to take part by those means; and
  - (h) if the applicant wants a witness to be accompanied by another person while giving evidence—
    - (i) name that other person, if possible, and
    - (ii) explain why it is appropriate for that witness to be accompanied, including the witness’ own views.

### **Application to vary or rescind a live link direction**

**3.37.—(1)** A party who wants the court to vary or rescind a live link 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;
  - (b) explain why it is in the interests of justice to vary or rescind the direction; and
  - (c) ask for a hearing, if the applicant wants one, and explain why it is needed.

*[Note. See section 52 of the Criminal Justice Act 2003.]*

#### **Application containing information withheld from another party**

- 3.38.**—(1) This rule applies where—
- (a) an applicant serves an application for a live link direction, or for its variation or rescission; 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.

#### **Representations in response**

- 3.39.**—(1) This rule applies where a party wants to make representations about an application for a live link direction or for the variation or rescission of such a direction.
- (2) Such a party must—
- (a) serve the representations on—

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- (i) the court officer, and
- (ii) each other party;
- (b) do so not more than 10 business days after service of the application; and
- (c) ask for a hearing, if that party wants one, and explain why it is needed.
- (3) Representations must explain why it is not in the interests of justice for the direction to be given, varied or rescinded, as the case may be.”; and
- (g) amend the table of contents correspondingly.