
STATUTORY INSTRUMENTS

1999 No. 2789

The Criminal Evidence (Northern Ireland) Order 1999

PART II

**SPECIAL MEASURES DIRECTIONS IN CASE OF
VULNERABLE AND INTIMIDATED WITNESSES**

Special measures

Screening witness from accused

11.—(1) A special measures direction may provide for the witness, while giving testimony or being sworn in court, to be prevented by means of a screen or other arrangement from seeing the accused.

(2) But the screen or other arrangement must not prevent the witness from being able to see, and to be seen by—

- (a) the judge and the jury (if there is one);
- (b) legal representatives acting in the proceedings; and
- (c) any interpreter or other person appointed (in pursuance of the direction or otherwise) to assist the witness.

(3) Where two or more legal representatives are acting for a party to the proceedings, paragraph (2)(b) is to be regarded as satisfied in relation to those representatives if the witness is able at all material times to see and be seen by at least one of them.

Evidence by live link

12.—(1) A special measures direction may provide for the witness to give evidence by means of a live link.

(2) Where a direction provides for the witness to give evidence by means of a live link, the witness may not give evidence in any other way without the permission of the court.

(3) The court may give permission for the purposes of paragraph (2) if it appears to the court to be in the interests of justice to do so, and may do so either—

- (a) on an application by a party to the proceedings, if there has been a material change of circumstances since the relevant time, or
- (b) of its own motion.

(4) In paragraph (3) “the relevant time” means—

- (a) the time when the direction was given, or
- (b) if a previous application has been made under that paragraph, the time when the application (or last application) was made.

(5) Where in proceedings before a magistrates' court—

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- (a) evidence is to be given by means of a live link in accordance with a special measures direction, but
- (b) suitable facilities for receiving such evidence are not available at any court-house in which that court can (apart from this paragraph) lawfully sit,

the court may sit for the purposes of the whole or any part of those proceedings at a place designated by the Lord Chancellor^[F1], after consultation with the Lord Chief Justice,] as a place having facilities to receive evidence given through a live link.

(6) In this Part “live link” means a live television link or other arrangement whereby a witness, while 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 the persons specified in Article 11(2)(a) to (c).

F1 Words in art. 12(5) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 114; S.I. 2006/1014, art. 2(a), Sch. 1 paras. 10, 12(b)

Evidence given in private

13.—(1) A special measures direction may provide for the exclusion from the court, during the giving of the witness's evidence, of persons of any description specified in the direction.

(2) The persons who may be so excluded do not include—

- (a) the accused,
- (b) legal representatives acting in the proceedings, or
- (c) any interpreter or other person appointed (in pursuance of the direction or otherwise) to assist the witness.

(3) A special measures direction providing for representatives of news gathering or reporting organisations to be so excluded shall be expressed not to apply to one named person who—

- (a) is a representative of such an organisation, and
- (b) has been nominated for the purpose by one or more such organisations,

unless it appears to the court that no such nomination has been made.

(4) A special measures direction may only provide for the exclusion of persons under this Article where—

- (a) the proceedings relate to a sexual offence; or
- (b) it appears to the court that there are reasonable grounds for believing that any person other than the accused has sought, or will seek, to intimidate the witness in connection with testifying in the proceedings.

(5) Any proceedings from which persons are excluded under this Article (whether or not those persons include representatives of news gathering or reporting organisations) shall nevertheless be taken to be held in public for the purposes of any privilege or exemption from liability available in respect of fair, accurate and contemporaneous reports of legal proceedings held in public.

Removal of wigs and gowns

14. A special measures direction may provide for the wearing of wigs or gowns to be dispensed with during the giving of the witness's evidence.

Video recorded evidence in chief

15.—(1) A special measures direction may provide for a video recording of an interview of the witness to be admitted as evidence in chief of the witness.

(2) A special measures direction may, however, not provide for a video recording, or a part of such a recording, to be admitted under this Article if the court is of the opinion, having regard to all the circumstances of the case, that in the interests of justice the recording, or that part of it, should not be so admitted.

(3) In considering for the purposes of paragraph (2) whether any part of a recording should not be admitted under this Article, the court must consider whether any prejudice to the accused which might result from that part being so admitted is outweighed by the desirability of showing the whole, or substantially the whole, of the recorded interview.

(4) Where a special measures direction provides for a recording to be admitted under this Article, the court may nevertheless subsequently direct that it is not to be so admitted if—

- (a) it appears to the court that—
 - (i) the witness will not be available for cross-examination (whether conducted in the ordinary way or in accordance with any such direction), and
 - (ii) the parties to the proceedings have not agreed that there is no need for the witness to be so available; or
- (b) any rules of court requiring disclosure of the circumstances in which the recording was made have not been complied with to the satisfaction of the court.

(5) Where a recording is admitted under this Article—

- (a) the witness must be called by the party tendering it in evidence, unless—
 - (i) a special measures direction provides for the witness's evidence on cross-examination to be given otherwise than by testimony in court, or
 - (ii) the parties to the proceedings have agreed as mentioned in paragraph (4)(a)(ii); and
- (b) the witness may not give evidence in chief otherwise than by means of the recording—
 - (i) as to any matter which, in the opinion of the court, has been dealt with adequately in the witness's recorded testimony, or
 - (ii) without the permission of the court, as to any other matter which, in the opinion of the court, is dealt with in that testimony.

(6) Where in accordance with paragraph (2) a special measures direction provides for part only of a recording to be admitted under this Article, references in paragraphs (4) and (5) to the recording or to the witness's recorded testimony are references to the part of the recording or testimony which is to be so admitted.

(7) The court may give permission for the purposes of paragraph (5)(b)(ii) if it appears to the court to be in the interests of justice to do so, and may do so either—

- (a) on an application by a party to the proceedings, if there has been a material change of circumstances since the relevant time, or
- (b) of its own motion.

(8) In paragraph (7) “the relevant time” means—

- (a) the time when the direction was given, or
- (b) if a previous application has been made under that paragraph, the time when the application (or last application) was made.

(9) The court may, in giving permission for the purposes of paragraph (5)(b)(ii), direct that the evidence in question is to be given by the witness by means of a live link; and, if the court so directs,

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paragraph (5) of Article 12 shall apply in relation to that evidence as it applies in relation to evidence which is to be given in accordance with a special measures direction.

(10) A magistrates' court conducting a preliminary investigation or preliminary inquiry may consider any video recording in relation to which it is proposed to apply for a special measures direction providing for it to be admitted at the trial in accordance with this Article.

(11) Nothing in this Article affects the admissibility of any video recording which would be admissible apart from this Article.

Commencement Information

- II** Art. 15 partly in operation; art. 15 not in operation at date of making see art. 1(2); art. 15 in operation for certain purposes at 1.6.2000 by S.R. 2000/211, art. 2; art. 15 in operation for certain purposes at 30.6.2003 by S.R. 2003/323, art. 2, Sch.; art. 15 in operation for certain purposes at 1.12.2003 by S.R. 2003/476, art. 2; art. 15 in operation for certain purposes at 1.8.2009 by S.R. 2009/275, art. 2

Video recorded cross-examination or re-examination

16.—(1) Where a special measures direction provides for a video recording to be admitted under Article 15 as evidence in chief of the witness, the direction may also provide—

- (a) for any cross-examination of the witness, and any re-examination, to be recorded by means of a video recording; and
- (b) for such a recording to be admitted, so far as it relates to any such cross-examination or re-examination, as evidence of the witness under cross-examination or on re-examination, as the case may be.

(2) Such a recording must be made in the presence of such persons as rules of court or the direction may provide and in the absence of the accused, but in circumstances in which—

- (a) the judge and legal representatives acting in the proceedings are able to see and hear the examination of the witness and to communicate with the persons in whose presence the recording is being made, and
- (b) the accused is able to see and hear any such examination and to communicate with any legal representative acting for him.

(3) Where two or more legal representatives are acting for a party to the proceedings, paragraph (2)(a) and (b) are to be regarded as satisfied in relation to those representatives if at all material times they are satisfied in relation to at least one of them.

(4) Where a special measures direction provides for a recording to be admitted under this Article, the court may nevertheless subsequently direct that it is not to be so admitted if any requirement of paragraph (2) or rules of court or the direction has not been complied with to the satisfaction of the court.

(5) Where in pursuance of paragraph (1) a recording has been made of any examination of the witness, the witness may not be subsequently cross-examined or re-examined in respect of any evidence given by the witness in the proceedings (whether in any recording admissible under Article 15 or this Article or otherwise than in such a recording) unless the court gives a further special measures direction making such provision as is mentioned in paragraph (1)(a) and (b) in relation to any subsequent cross-examination, and re-examination, of the witness.

(6) The court may only give such a further direction if it appears to the court—

- (a) that the proposed cross-examination is sought by a party to the proceedings as a result of that party having become aware, since the time when the original recording was made

in pursuance of paragraph (1), of a matter which that party could not with reasonable diligence have ascertained by then, or

(b) that for any other reason it is in the interests of justice to give the further direction.

(7) Nothing in this Article shall be read as applying in relation to any cross-examination of the witness by the accused in person (in a case where the accused is to be able to conduct any such cross-examination).

Examination of witness through intermediary

17.—(1) A special measures direction may provide for any examination of the witness (however and wherever conducted) to be conducted through an interpreter or other person approved by the court for the purposes of this Article (“an intermediary”).

(2) The function of an intermediary is to communicate—

(a) to the witness, questions put to the witness, and

(b) to any person asking such questions, the answers given by the witness in reply to them, and to explain such questions or answers so far as necessary to enable them to be understood by the witness or person in question.

(3) Any examination of the witness in pursuance of paragraph (1) must take place in the presence of such persons as rules of court or the direction may provide, but in circumstances in which—

(a) the judge and legal representatives acting in the proceedings are able to see and hear the examination of the witness and to communicate with the intermediary, and

(b) (except in the case of a video recorded examination) the jury (if there is one) are able to see and hear the examination of the witness.

(4) Where two or more legal representatives are acting for a party to the proceedings, paragraph (3)(a) is to be regarded as satisfied in relation to those representatives if at all material times it is satisfied in relation to at least one of them.

(5) A person may not act as an intermediary in a particular case except after making a declaration, in such form as may be prescribed by rules of court, that he will faithfully perform his function as intermediary.

(6) Paragraph (1) does not apply to an interview of the witness which is recorded by means of a video recording with a view to its admission as evidence in chief of the witness; but a special measures direction may provide for such a recording to be admitted under Article 15 if the interview was conducted through an intermediary and—

(a) that person complied with paragraph (5) before the interview began, and

(b) the court's approval for the purposes of this Article is given before the direction is given.

(7) Article 3 of the Perjury (Northern Ireland) Order 1979 (perjury) shall apply in relation to a person acting as an intermediary as it applies in relation to a person lawfully sworn as an interpreter in a judicial proceeding; and for this purpose, where a person acts as an intermediary in any proceeding which is not a judicial proceeding for the purposes of that Article, that proceeding shall be taken to be part of the judicial proceeding in which the witness's evidence is given.

Aids to communication

18. A special measures direction may provide for the witness, while giving evidence (whether by testimony in court or otherwise), to be provided with such device as the court considers appropriate with a view to enabling questions or answers to be communicated to or by the witness despite any disability or disorder or other impairment which the witness has or suffers from.

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