

**2003 No. 295**

**COUNTY COURTS**

**County Court (Amendment No. 2) Rules  
(Northern Ireland) 2003**

*Made* - - - - - *8th June 2003*

*Coming into operation* *30th June 2003*

We, the County Court Rules Committee, appointed by the Lord Chancellor under Article 46 of the County Courts (Northern Ireland) Order 1980(a), in exercise of the powers conferred on us by Article 47 of that Order and Articles 8(6) and 39(1) of the Criminal Evidence (Northern Ireland) Order 1999(b), and of all other powers enabling us in that behalf, hereby make the following Rules: –

**Citation and interpretation**

**1.**—(1) These Rules may be cited as the County Court (Amendment No. 2) Rules (Northern Ireland) 2003.

(2) In these Rules, a reference to an Order, Part, Appendix or Form is a reference to that Order, Part, Appendix or Form as numbered in the County Court Rules (Northern Ireland) 1981(c).

**Amendment to the principal Rules**

**2.**—(1) In Order 32 Part IIA, for Rules 6B and 6C, there shall be substituted the following new Rules: –

**“Application for special measures direction**

**6B.**—(1) Any party to an appeal arising out of criminal proceedings in a magistrates’ court may apply for a special measures direction under Article 7 of the 1999 Order by giving notice in Form 137A.

(2) If the application is for a special measures direction –

- (a) enabling a witness to give evidence by means of a live link, the information sought in Part 2 of Form 137A shall be provided;
- (b) enabling a video recording of an interview of a witness to be admitted as evidence in chief of the witness, the information sought in Part 3 of Form 137A shall be provided.

(3) An application under paragraph (1) shall be made within 14 days from the date of the service of notice of appeal from a decision of a magistrates’ court.

---

(a) S.I. 1980/397 (N.I. 3)

(b) S.I. 1999/2789 (N.I. 8)

(c) S.R. 1981 No. 225; to which the most recent relevant amendment was made by S.R. 1996 No. 294 and S.R. 2003 No. 272

(4) The notice under paragraph (1) shall be served on the chief clerk of the appropriate county court division, and at the same time a copy thereof shall be served by the applicant on every other party to the appeal.

(5) Any party on whom a copy of a notice under paragraph (1) is served may oppose the application for a special measures direction in respect of any measure available in relation to the witness, whether or not the question whether the witness is eligible for assistance by virtue of Article 4(1)(a) of the 1999 Order is in issue.

(6) Any party who wishes to oppose the application shall, within 7 days of the date the notice was served on him, notify the applicant and the chief clerk, in writing, of his opposition and give reasons for it.

(7) In order to comply with paragraph (6) –

(a) a party shall state in the written notification whether he –

(i) disputes that the witness is eligible for assistance by virtue of Article 4(1)(a) of the 1999 Order; and

(ii) opposes the granting of a special measures direction; and

(b) where the application relates to the admission of a video recording, a party who receives a recording shall provide the information required by Rule 6H(5).

(8) Except where notice is received in accordance with paragraph (6), the court may –

(a) determine the application in favour of the applicant without a hearing; or

(b) direct a hearing.

(9) Where a party to the appeal notifies the chief clerk in accordance with paragraph (6) of his opposition to the application, the court shall direct a hearing of the application.

(10) Where a hearing of the application is to take place in accordance with paragraph (8) or (9), the chief clerk shall notify each party to the appeal of the time and place of the hearing.

(11) A party notified in accordance with paragraph (10) may be present at the hearing and be heard.

(12) The chief clerk shall, as soon as reasonably practicable, notify all the parties of the decision in Form 137B, and if the application was made for a direction enabling a video recording of an interview of a witness to be admitted as evidence in chief of that witness, the notification must state whether the whole or specified parts only of the video recording or recordings disclosed are to be admitted in evidence.

#### **Application for an extension of time**

**6C.**—(1) Without prejudice to the generality of Order 43 Rule 10, an application may be made in writing for the period of 14 days specified in Rule 6B(3) to be extended.

(2) The application may be made either before or after that period has expired.

(3) The application shall be accompanied by a statement setting out the reasons why the applicant is or was unable to make the application within that period, and the application and the statement shall be served by the applicant on the chief clerk and on every other party to the appeal.

(4) An application for an extension of time under this Rule shall be determined by a Judge without a hearing unless the Judge otherwise directs.

(5) The chief clerk shall notify all the parties of the Judge’s decision.”

(2) In Order 32 Part IIA, after Rule 6C there shall be added the following new Rules:

#### **“Late applications**

**6D.**—(1) Notwithstanding the requirements of Rule 6B –

(a) an application for a special measures direction may be made orally at the hearing of the appeal; or

- (b) the court may of its own motion raise the issue whether a special measures direction should be given.
- (2) Where an application is made in accordance with paragraph (1)(a) –
  - (a) the applicant must state the reasons for the late application; and
  - (b) the court must be satisfied that the applicant was unable to make the application in accordance with Rule 6B.
- (3) The court shall determine, before making a special measures direction –
  - (a) whether to allow other parties to the appeal to make representations on the question;
  - (b) the time allowed for making such representations (if any); and
  - (c) whether the question should be determined following a hearing at which the parties to the appeal may be heard.

#### **Discharge or variation of a special measures direction**

**6E.**—(1) An application to discharge or vary a special measures direction under Article 8(2) of the 1999 Order shall be in writing and shall specify each material change of circumstances which the applicant alleges has occurred since the direction was made.

(2) An application under paragraph (1) shall be served, by the applicant, on the chief clerk and on each party to the appeal as soon as reasonably practicable after the change of circumstances occurs.

(3) Any party on whom the application is served in accordance with paragraph (2) may oppose the application on the ground that it discloses no material change of circumstances.

(4) Paragraphs (6) to (12) of Rule 6B shall apply to an application to discharge or vary a special measures direction as they apply to an application for a direction.

#### **Renewal application following a material change of circumstances**

**6F.**—(1) Where an application for a special measures direction has been refused by the court, the application may only be renewed (“renewal application”) where there has been a material change of circumstances since the court refused the application.

(2) The applicant shall-

- (a) specify in the renewal application each material change of circumstances which is alleged to have occurred; and
- (b) serve the renewal application on the chief clerk, and on each party to the appeal, as soon as reasonably practicable after the change occurs.

(3) Any party on whom the application is served in accordance with paragraph (2)(b) may oppose the application on the ground that it discloses no material change of circumstances.

(4) Paragraphs (6) to (12) of Rule 6B, Rules 6G and 6H apply to a renewal application as they apply to the application which was refused.

#### **Application for special measures direction for witness to give evidence by means of a live link**

**6G.**—(1) Where the application for a special measures direction is made in accordance with Rule 6B(2)(a), for a witness to give evidence by means of a live link, the following provisions of this Rule shall also apply.

(2) Subject to paragraph (3), a party who seeks to oppose an application for a witness to give evidence by means of a live link must, in order to comply with Rule 6B(6), state why in his view the giving of a special measures direction would not be likely to maximise the quality of the witness’s evidence.

(3) Paragraph (2) does not apply in relation to a witness in need of special protection within the meaning of Article 9(1)(b) of the 1999 Order.

(4) Where a special measures direction is made enabling a witness to give evidence by means of a live link, that witness shall be accompanied at the live link only by persons acceptable to a Judge.

#### **Video recording of testimony from witnesses**

**6H.**—(1) Where an application is made for a special measures direction enabling a video recording of an interview of a witness to be admitted as evidence in chief of the witness, the following provisions of this Rule shall also apply.

(2) Notice of the application made in accordance with Rule 6B(1) shall be accompanied by the video recording (or a copy of the video recording) which it is proposed to tender in evidence and shall include –

- (a) the name of the appellant and the offence charged;
- (b) the name and date of birth of the witness in respect of whom the application is made;
- (c) the date on which the video recording was made;
- (d) a statement as to whether, and if so at what point in the video recording, an oath was administered to, or a solemn declaration made by, the witness;
- (e) a statement that, in the opinion of the applicant, either –
  - (i) the witness is available for cross-examination; or
  - (ii) the witness is not available for cross-examination and the parties have agreed that there is no need for the witness to be so available;
- (f) a statement of the circumstances in which the video recording was made which complies with paragraph (4); and
- (g) the date on which the video recording was disclosed to the other party or parties.

(3) Where it is proposed to tender part only of a video recording of an interview with the witness, the application must specify that part and be accompanied by a video recording of the entire interview, including those parts which it is not proposed to tender in evidence, and by a statement of the circumstances in which the video recording of the entire interview was made which complies with paragraph (4).

(4) The statement of the circumstances in which the video recording was made referred to in paragraphs (2)(f) and (3) shall include the following information, except in so far as it is contained in the recording itself: –

- (a) the times at which the recording commenced and finished, including details of interruptions;
- (b) the location at which the recording was made and the usual function of the premises;
- (c) in relation to each person present at any point during, or immediately before, the recording –
  - (i) their name, age and occupation;
  - (ii) the time for which each person was present; and
  - (iii) the relationship, if any, of each person to the witness and to the appellant;
- (d) in relation to the equipment used for the recording-
  - (i) a description of the equipment;
  - (ii) the number of cameras used;
  - (iii) whether the cameras were fixed or mobile;
  - (iv) the number and location of the microphones;
  - (v) the video format used; and
  - (vi) whether it offered single or multiple recording facilities and, if so, which were used; and
- (e) the location of the mastertape if the video recording is a copy and details of when and by whom the copy was made.

(5) A party who receives a copy of a recording under paragraph (2) shall within 7 days of date on which it was served on him, notify the applicant and the chief clerk, in writing –

- (a) whether he objects to the admission under Article 15 of the 1999 Order of any part of the video recording or recordings disclosed, giving his reasons why it would not be in the interests of justice for the recording or any part of it to be admitted;
- (b) whether he would agree to the admission of part of the video recording or recordings and if so, which part or parts; and
- (c) whether he wishes to be represented at any hearing of the application.

(6) Notwithstanding the provisions of Rule 6B and this Rule, a copy of any video recording which the appellant proposes to tender in evidence need not be sent to the prosecution until the close of the prosecution case at the hearing of the appeal.

(7) The court may determine an application by the appellant to tender in evidence a video recording even though a copy of the recording has not, in accordance with paragraph (6), been served upon the prosecutor.

(8) Where a copy of a video recording which is the subject of a special measures direction is sent to the prosecutor after the direction has been made, the prosecutor may apply to the court for the direction to be varied or discharged.

(9) An application under paragraph (8) may be made orally to the court.

(10) A prosecutor who makes an application under paragraph (8) shall state –

- (a) why he objects to the admission under Article 15 of the 1999 Order of any part of the video recording or recordings disclosed, giving his reasons why it would not be in the interests of justice for the recording or any part of it to be admitted; and
- (b) whether he would agree to the admission of part of the video recording or recordings and if so, which part or parts.

(11) The court shall, before determining the application: –

- (a) direct a hearing of the application; and
- (b) allow all the parties to the appeal to be present and be heard on the application.

(12) The chief clerk shall notify all parties to the appeal of the decision of the court as soon as reasonably practicable after the decision is given.

(13) Any decision varying a special measures direction must state whether the whole or specified parts of the video recording or recordings subject to the application are to be admitted in evidence.

### **Expert Evidence**

**6I.** Any party to an appeal who proposes to adduce expert evidence (whether of fact or opinion) in connection with an application or renewal application for, or an application to vary or discharge, a special measures direction shall, not less than 14 days before the date set for the hearing at which the evidence is to be adduced –

- (a) serve the other party or parties to the appeal with a statement in writing of any finding or opinion which he proposes to adduce by way of such evidence; and
- (b) where a request is made to him in that behalf by any other party to the appeal, provide that party also with a copy of (or if it appears to the party proposing to adduce the evidence to be more practicable, a reasonable opportunity to examine) the record of any observation, test, calculation or other procedure on which such finding or opinion is based and any document or other thing or substance in respect of which any such procedure has been carried out.”

(3) In Order 32 Part III, Rule 7 shall be amended by inserting before the definition of “enactment”, the following definition:

“ “the 1999 Order” means the Criminal Evidence (Northern Ireland) Order 1999.”.

(4) Appendix I shall be amended as follows:

- (a) by substituting for Forms 137A and 137B, the new Forms 137A and 137B set out in the Schedule to these Rules;
- (b) by deleting Form 137C.

We, the undersigned members of the County Court Rules Committee, having by virtue of the powers vested in us in this behalf made the foregoing Rules, do hereby certify the same under our hand and submit them to the Lord Chancellor accordingly.

*A. R. Hart*

*J. J. Curran*

*H. Keegan*

*Barry Valentine*

*James A. Agnew*

*Brian J. Stewart*

*P. J. Kelly*

Dated 21st May 2003.

After consultation with the Lord Chief Justice, I allow these Rules, which shall come into operation on 30th June 2003.

Dated 16th June 2003.

*Irvine of Lairg, C.*

SCHEDULE

Rule 2(4)

FORMS TO BE SUBSTITUTED AND INSERTED IN THE COUNTY COURT RULES  
(NORTHERN IRELAND) 1981

FORM 137A

FORM OF APPLICATION FOR A SPECIAL MEASURES DIRECTION UNDER ARTICLE 7 OF  
THE CRIMINAL EVIDENCE (NORTHERN IRELAND) ORDER 1999

Order 32: Part IIA: Rule 6B

An application must be made within 14 days from the date of service of notice of appeal.

This form may also be used where an extension of time has been granted for the making of this application.

A copy of this form must be served at the same time on every other party to the appeal.

PART 1

To be completed by all applicants

<i>Details required</i>	<i>Notes</i>
<p><b>Details of witness</b></p> <p>Name of Witness:</p> <p>Date of birth of witness:</p> <p>If an application has been made to tender in evidence a video recording of testimony from the witness, give the date and (if known) result of that application:</p> <p>If the applicant is the prosecutor, give the name of the witness (otherwise leave blank):</p>	<p>An application by the appellant for evidence to be given through a live link or by means of a video recording need not disclose who that witness is, except to the extent that the disclosure is required by section 5(7) of the Criminal Procedure and Investigations Act 1996.</p>
<p><b>Case details</b></p> <p>Name of PSNI Central Process Office:</p> <p>Central Process Office or District Command Unit reference number:</p> <p>DPP reference number:</p> <p>Appellant(s): Surname:</p> <p style="padding-left: 40px;">Forenames:</p> <p>Court venue:</p> <p>Date of next court appearance:</p>	<p>The venue of the court hearing the appeal.</p>
<p><b>Charges</b></p>	<p>Give brief details (including date and location of offence) of those charges to which this application applies</p>





<i>Details required</i>	<i>Notes</i>
	(b) a previous application for a special measures direction was refused and this application seeks to reverse that decision.

#### PART 2

To be completed if the application is for evidence to be given through a live link

<i>Details required</i>	<i>Notes</i>
<p><b>Details of application</b></p> <p>Give –</p> <p>(a) the address of any venue from which the witness will give evidence if the court’s own live link is not used:</p> <p>(b) the name of the person who it is proposed will accompany the witness:</p> <p>(c) the occupation of this person:</p> <p>(d) the relationship (if any) of this person to the witness:</p>	<p>An application by the appellant need not disclose the name of the person proposed to accompany the witness if disclosure could lead to the identification of the witness.</p>

#### **Grounds**

State why it is believed that this person should accompany the witness:

#### PART 3

To be completed if the application is to tender in evidence a video recording under Article 15 of the Criminal Evidence (Northern Ireland) Order 1999

<i>Details required</i>	<i>Notes</i>
<p><b>Video recording(s)</b></p> <p>Statement as to circumstances in which video recording made:</p> <p>Date(s) of video recording(s):</p> <p>Time(s) of video recording(s):</p> <p>Location and normal function of premises where video recording made:</p>	<p>These details need to be completed only to the extent that the information is not contained in the video recording itself.</p> <p>Give the times at which recording began and finished, including details of any interruptions.</p> <p>Give address of premises where recording made and state the usual function of those premises.</p>
<p><b>Details of those present while recording made</b></p> <p>Give details of each person present at any point during the recording:</p>	<p>Include name, age and occupation of anyone present; time for which present; relationship (if any) to witness and to the appellant.</p>
<p><b>Equipment used</b></p> <p>Give a description of the equipment used for the recording:</p>	<p>The description must include the following information – number and type of cameras used (fixed or mobile); the number</p>

<i>Details required</i>	<i>Notes</i>
	and location of microphones; the video format used; and whether it offered single or multiple recording facilities and if it did which were used.
<p><b>Recordings of part only of an interview</b></p> <p>State whether the video recording contains part only of the interview with the witness:</p>	<p>A copy of any video recordings of other parts of the interview with the witness which it is not proposed to tender in evidence must also be provided to the court and the other parties. The details of each such recording must be given as above. Use separate sheets where necessary.</p>
<p><b>Details of copy</b></p> <p>State in respect of each video recording whether it is a copy, and give the following details in respect of each copy –</p> <p>Name and address of person who has the mastertape:</p> <p>When, and by whom , the copy was made:</p>	
<p><b>Attendance and supply of copies</b></p> <p>Is the witness willing and able to attend the appeal for cross-examination?</p> <p>Have copies of the video recording(s) to which this application relates been disclosed to the other parties?</p> <p>Has a copy of this notice and the video recording(s) to which it relates been served on each party to the appeal?</p> <p>Has the agreement of the other parties to the video recording(s) being tendered as evidence been sought?</p>	<p>Where the application is by the appellant, the video recording(s) do not have to be served on the prosecution until the close of the prosecution case at the hearing of the appeal.</p>

Dated this      day of                      20      .

Applicant  
[Solicitor for Applicant]

To the Chief Clerk of the County Court division of

And to

(insert names and addresses of each of the other parties to the appeal)

NOTE:

The notice served on the chief clerk shall be endorsed with the date upon which and the manner in which notice was served on each of the other parties to the appeal.

FORM 137B

NOTICE OF DECISION ON APPLICATION FOR A SPECIAL MEASURES DIRECTION UNDER  
ARTICLE 7 OF THE CRIMINAL EVIDENCE (NORTHERN IRELAND) ORDER 1999

Order 32: Part IIA: Rule 6B(12)

of

Appellant

of

Respondent



Petty Sessions District of

County Court Division of

Upon the hearing of an application by . . . . . (*name of applicant*), on . . . . .  
(*date application heard*) under Article 7 of the Criminal Evidence (Northern Ireland) Order 1999 for a  
special measures direction, the court made an order to the following effect, viz: –

Special measures direction under Article [11] [12] [13] [14] [15] [18] granted\*/granted subject to the  
following conditions\*/refused on the following grounds –

This day of 20 .

Chief Clerk

## EXPLANATORY NOTE

*(This note is not part of the Rules.)*

These Rules amend the County Court Rules (Northern Ireland) 1981 (“the principal Rules”) and contain provisions relating to applications for a special measures direction in the case of witnesses who require assistance on the grounds of age.

Rule 2(1) substitutes new Rules 6B and 6C into Order 32 of the principal Rules. *New Rule 6B* provides for an application for a special measures direction to be made in the form specified in the Schedule to these Rules. An application for a direction to give evidence by means of a live link or by means of a video recording of the witness’s testimony must also contain the additional information specified in Part 2 or Part 3 of the form.

*New Rule 6C* provides that the court may extend the time for making an application for a special measures direction.

Rule 2(2) adds new Rules 6D to 6I. *New Rule 6D* provides for late applications. *New Rule 6E* provides for an application to be made to vary or discharge a special measures direction which has already been made. *New Rule 6F* provides for renewal applications where a material change of circumstances has occurred since an application was refused.

*New Rule 6G* imposes additional requirements where the application relates to the giving of evidence by means of a live link.

*New Rule 6H* imposes additional requirements where the application relates to the admission of a video recording of an interview of the witness as evidence in chief of the witness.

*New Rule 6I* provides for the mutual disclosure between the parties of expert evidence to be adduced in connection with the application for the special measures direction.

Rule 2(3) inserts a reference to the Criminal Evidence (Northern Ireland) Order 1999 into the interpretation provisions in Order 32 of the principal Rules.

Rule 2(4) amends Appendix I to the principal Rules by:

- substituting new Forms 137A and 137B for use in connection with applications prescribed by these Rules; and
- deleting Form 137C

© Crown Copyright 2003

Published and printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty’s Stationery Office being the Government Printer for Northern Ireland and the Officer appointed to print the Acts of the Northern Ireland Assembly

Dd. N1040. C2. 6/03. Gp. 130. 14567.

£2.50

ISBN 0-337-95132-2



9 780337 951329