
STATUTORY INSTRUMENTS

1992 No. 2757 (L.21)

SUPREME COURT OF ENGLAND AND WALES

The Criminal Appeal (Amendment) Rules 1992

Made - - - - *4th November 1992*
Laid before Parliament *9th November 1992*
Coming into force - - *1st December 1992*

We, the Crown Court Rule Committee, in exercise of the powers conferred on us by sections 84(1) and (2), 86 and 87(4) of the Supreme Court Act 1981⁽¹⁾, section 32(4) and (5) of the Criminal Justice Act 1988⁽²⁾ and section 32 of the Criminal Appeal Act 1968⁽³⁾ hereby make the following Rules:

1. These Rules may be cited as the Criminal Appeal (Amendment) Rules 1992 and shall come into force on 1st December 1992.
2. In these Rules “the principal rules” means the Criminal Appeal Rules 1968⁽⁴⁾.
3. For rule 9A (e) of the principal rules, there shall be substituted the following rule:

“Evidence through television link where witness is a child or is to be cross-examined after admission of a video recording

9A.—(1) A party to an appeal who applies for leave to call a witness may also apply for leave under section 32(1)(b) of the Criminal Justice Act 1988 for the evidence of that witness to be given through a live television link where

- (a) the offence charged is one to which section 32(2) applies; and
- (b) the evidence is to be given by a witness who is either:
 - (i) in the case of an offence falling within section 32(2)(a) or (b), under the age of 14; or
 - (ii) in the case of an offence falling within section 32(2)(c), under the age of 17; or
 - (iii) a person who is to be cross-examined following the admission under section 32A of that Act of a video recording of testimony from him;

(1) 1981 c. 54.
(2) 1988 c. 33; section 32 was amended by the Criminal Justice Act 1991 (c. 53), section 55.
(3) 1968 c. 19.
(4) S.I.1968/1262; the relevant amending instrument is S.I. 1988/2159.

and references in this rule to an offence include references to attempting or conspiring to commit, or aiding, abetting, counselling, procuring or inciting the commission of, that offence.

(2) An application under paragraph (1) shall be made by serving a notice in writing on the Registrar which shall state:

- (a) the grounds of the application,
- (b) the date of birth of the witness,
- (c) the name of the witness, and
- (d) the name, occupation and relationship (if any) to the witness of any person proposed to accompany the witness and the grounds for believing that person should accompany the witness.

(3) An application under paragraph (1) shall be made at the same time as the application for leave to call the witness or at any time thereafter, but no less than 14 days before the date fixed for the hearing of the appeal except with the leave of the court.

(4) The Registrar shall, as soon as practicable after receiving an application under paragraph (1), send a copy of the notice to the other parties to the appeal.

(5) An application under paragraph (1) shall be determined without a hearing, unless the Court otherwise directs, and the Registrar shall notify the applicant and the other parties of the time and place of any hearing.

(6) Without prejudice to rule 15, the Registrar shall notify all the parties and the person who is to accompany the witness (if known) of the decision of the court in relation to an application under paragraph (1). Where leave is granted, the notification shall state the name of the witness, and, if known, the name, occupation and relationship (if any) to the witness of the person who is to accompany the witness.

(7) A witness giving evidence through a television link pursuant to leave granted in accordance with this rule shall be accompanied by a person acceptable to the Court and, unless the Court otherwise directs, by no other person.”.

4. After rule 9B of the principal rules, there shall be inserted the following rule—

“Video Recordings of testimony from child witnesses

9C.—(1) A party to an appeal who applies for leave to call a witness may also apply for leave under section 32A of the Criminal Justice Act 1988 to tender in evidence a video recording of testimony from a witness where—

- (a) the offence charged is one to which section 32(2) of that Act applies;
- (b) in the case of an offence falling within section 32(2)(a) or (b), the proposed witness is under the age of 14 or, if he was under 14 when the video recording was made, is under the age of 15;
- (c) in the case of an offence falling within section 32(2)(c), the proposed witness is under the age of 17 or, if he was under 17 when the video recording was made, is under the age of 18; and
- (d) the video recording is of an interview conducted between an adult and a person coming within sub-paragraph (b) or (c) above (not being the accused or one of the accused) which relates to any matter in issue in the proceedings;

and references in this rule to an offence include references to attempting or conspiring to commit, or aiding, abetting, counselling, procuring or inciting the commission of, that offence.

(2) An application under paragraph (1) shall be made by serving a notice in writing on the Registrar. The application shall be accompanied by the video recording which it is proposed to tender in evidence and shall include the following, namely—

- (a) the name of the appellant and the offence or offences 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 that in the opinion of the applicant the witness is willing and able to attend the appeal for cross-examination;
- (e) a statement of the circumstances in which the video recording was made which complies with paragraph (4) below.

(3) Where it is proposed to tender part only of a video recording of an interview with the witness, an application under paragraph (1) 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) below.

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

- (a) the times at which the recording commenced and finished, including details of any interruptions;
- (b) the location at which the recording was made and the usual function of the premises;
- (c) the name, age and occupation of any person present at any point during the recording; the time for which he was present; his relationship (if any) to the witness and to the appellant;
- (d) a description of the equipment used including the number of cameras used and whether they were fixed or mobile; the number and location of microphones; the video format used and whether there were single or multiple recording facilities;
- (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) An application under paragraph (1) shall be made at the same time as the application for leave to call the witness or at any time thereafter, but no less than 14 days before the date fixed for the hearing of the appeal except with the leave of the court.

(6) The Registrar shall, as soon as practicable after receiving an application under paragraph (1), send a copy of the notice to the other parties to the appeal. Copies of any video recording required by paragraph (2) or (3) to accompany the notice shall be provided by the applicant and sent by the Registrar to any party to the appeal not already served with a copy. In the case of an appellant acting in person, a copy shall be made available for viewing by him.

(7) An application under paragraph (1) shall be determined without a hearing, unless the Court otherwise directs, and the Registrar shall notify the applicant and the other parties of the time and place of any hearing.

(8) Without prejudice to rule 15, the Registrar shall notify all the parties of the decision of the Court in relation to an application under paragraph (1) and, where leave is granted, the notification shall state whether the whole or specified parts only of the video recording or recordings disclosed are to be admitted in evidence.”

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

5. In rule 19 of the principal rules (transcripts), for paragraphs (a) and (b) there shall be substituted the following—

- “(a) shall, on request be supplied to the Registrar or any interested party; and
- (b) may, on request, be supplied to any other person,
on payment of such charge as may be fixed for the time being by the Treasury.”.

*Mackay of Clashfern, C.
Taylor, C.J.
Russell, L.J.
Rougier, J.
J. A. Henham
P. F. Guggenheim
M. D. L. Kalisher
S. T. Hammond
Geoffrey Rivlin*

Dated 4th November 1992

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Criminal Appeal Rules 1968 (the principal rules) and come into force on 1st December 1992. Rules 3 and 4 reflect the amendments made to the Criminal Justice Act 1988 (the 1988 Act) by sections 54 and 55 of the Criminal Justice Act 1991.

Rule 3 substitutes a new rule for rule 9A of the principal rules which relates to applications under section 32(1)(b) of the 1988 Act (evidence through television links by child witnesses).

Rule 4 adds a new rule 9C to the principal rules which provides for applications under section 32A of the 1988 Act (video recordings of testimony from child witnesses).

Rule 5 amends rule 19 of the principal rules so that all fees for the supply of transcripts of proceedings will be fixed by the Treasury, including those supplied to persons other than the Registrar of Criminal Appeals and interested parties.