
STATUTORY INSTRUMENTS

2002 No. 1688

The Crown Court (Special Measures Directions and Directions Prohibiting Cross-examination) Rules 2002

PART II

SPECIAL MEASURES DIRECTIONS

Application for special measures direction

2.—(1) An application by a party in any criminal proceedings for the court to give a special measures direction under section 19 of the Act must be made in writing in the form prescribed in the Schedule to these Rules or a form to the like effect.

(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 B of the form prescribed in the Schedule to these Rules must 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 C of that form must be provided.

(3) The application under paragraph (1) above must be sent to the appropriate officer of the Crown Court and at the same time a copy thereof must be sent by the applicant to every other party to the proceedings.

(4) The application must be received by the appropriate officer within 28 days of—

- (a) the committal of the defendant; or
- (b) the consent to the preferment of a bill of indictment in relation to the case; or
- (c) the service of a notice of transfer under section 53 of the Criminal Justice Act 1991(1); or
- (d) where a person is sent for trial under section 51 of the Crime and Disorder Act 1998(2), the service of copies of the documents containing the evidence on which the charge or charges are based under paragraph 1 of Schedule 3 to that Act; or
- (e) the service of a Notice of Appeal from a decision of a youth court or a magistrates' court.

(5) A party to whom an application is sent in accordance with paragraph (3) above may oppose the application for a special measures direction in respect of any, or any particular, measure available in relation to the witness, whether or not the question whether the witness is eligible for assistance by virtue of section 16 or 17 of the Act is in issue.

(6) A party who wishes to oppose the application must, within 14 days of the date the application was served on him, notify the applicant and the appropriate officer of the Crown Court in writing of his opposition and give reasons for it.

(7) In order to comply with paragraph (6) above—

- (a) a party must in the written notification state whether he—

(1) 1991 c. 53.
(2) 1998 c. 37.

- (i) disputes that the witness is eligible for assistance by virtue of section 16 or 17 of the Act;
 - (ii) disputes that any of the special measures available would be likely to improve the quality of evidence given by the witness or that such measures (or a combination of them) would be likely to maximise the quality of that evidence; and
 - (iii) 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 must provide the information required by rule 8(5) below.
- (8) Except where notice is received in accordance with paragraph (6) above, 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 proceedings notifies the appropriate officer of the Crown Court in accordance with paragraph (6) above of his opposition to the application, the court must direct a hearing of the application.
- (10) Where a hearing of the application is to take place in accordance with paragraph (8) or (9) above, the appropriate officer of the Crown Court shall notify each party to the proceedings of the time and place of the hearing.
- (11) A party notified in accordance with paragraph (10) above may be present at the hearing and be heard.
- (12) The appropriate officer of the Crown Court must, within 3 days of the decision of the Crown Court in relation to an application under paragraph (1) above being made, notify all the parties of the decision, 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

- 3.—**(1) An application may be made in writing for the period of 28 days specified in rule 2(4) above to be extended.
- (2) The application may be made either before or after that period has expired.
- (3) The application must be accompanied by a statement setting out the reasons why the applicant is or was unable to make the application within that period and a copy of the application and the statement must be sent to every other party to the proceedings.
- (4) An application for an extension of time under this rule shall be determined by a judge of the Crown Court without a hearing unless the judge otherwise directs.
- (5) The appropriate officer of the Crown Court shall notify all the parties of the judge's decision.

Late applications

- 4.—**(1) Notwithstanding the requirements of rule 2 above—
- (a) an application may be made for a special measures direction orally at the trial; 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 rule 4(1)(a) above—
- (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 2 above.
- (3) The court shall determine before making a special measures direction—
 - (a) whether to allow other parties to the proceedings 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 proceedings may be heard.

Discharge or variation of a special measures direction

5.—(1) An application to the court to discharge or vary a special measures direction under section 20(2) of the Act must be in writing and each material change of circumstances which the applicant alleges has occurred since the direction was made must be set out.

(2) An application under paragraph (1) above must be sent to the appropriate officer of the Crown Court as soon as reasonably practicable after the change of circumstances occurs.

(3) The applicant must also send copies of the application to each party to the proceedings at the same time as the application is sent to the appropriate officer.

(4) A party to whom an application is sent in accordance with paragraph (3) above may oppose the application on the ground that it discloses no material change of circumstances.

(5) Rule 2(6) to (12) above shall apply to an application to discharge or vary a special measures direction as it applies to an application for a direction.

Renewal application following a material change of circumstances

6.—(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 must—

- (a) identify in the renewal application each material change of circumstances which is alleged to have occurred; and
- (b) send the renewal application to the appropriate officer of the Crown Court as soon as reasonably practicable after the change occurs.

(3) The applicant must also send copies of the renewal application to each of the parties to the proceedings at the same time as the application is sent to the appropriate officer.

(4) A party to whom the renewal application is sent in accordance with paragraph (3) above may oppose the application on the ground that it discloses no material change of circumstances.

(5) Rule 2(6) to (12) above and rules 7 and 8 below 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 television link

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

(2) A party who seeks to oppose an application for a child witness to give evidence by means of a live link must, in order to comply with rule 2(5) above, 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) However, paragraph (2) above does not apply in relation to a child witness in need of special protection within the meaning of section 21(1)(b) of the Act.

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

Video recording of testimony from witnesses

8.—(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) The application made in accordance with rule 2(1) above must be accompanied by the video recording which it is proposed to tender in evidence and must include—

- (a) the name of the defendant and the offence to be 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) below; 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) below.

(4) The statement of the circumstances in which the video recording was made referred to in paragraphs (2)(f) and (3) above 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 defendant;
- (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 recording under paragraph (2) above must within 14 days of its receipt, notify the applicant and the appropriate officer of the Crown Court, in writing—
- (a) whether he objects to the admission under section 27 of the Act 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 2 and this rule, any video recording which the accused proposes to tender in evidence need not be sent to the prosecution until the close of the prosecution case at the trial.
- (7) The court may determine an application by the accused to tender in evidence a video recording even though the recording has not, in accordance with paragraph (6) above, been served upon the prosecution.
- (8) Where a video recording which is the subject of a special measures direction is sent to the prosecution 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) above may be made orally to the court.
- (10) A prosecutor who makes an application under paragraph (8) above must state—
- (a) why he objects to the admission under section 27 of the Act 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 must, before determining the application,—
- (a) direct a hearing of the application; and
 - (b) allow all the parties to the proceedings to be present and be heard on the application.
- (12) The appropriate officer of the Crown Court must notify all parties to the proceedings of the decision of the court as soon as may be reasonable 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

9. Any party to the proceedings who proposes to adduce expert evidence (whether of fact or opinion) in connection with an application or renewal application for, or for varying or discharging, a special measures direction must, not less than 14 days before the date set for the trial to begin—

- (a) furnish the other party or parties to those proceedings with a statement in writing of any finding or opinion which he proposes to adduce by way of such evidence; and

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

- (b) where a request is made to him in that behalf by any other party to those proceedings, 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.