

2002 No. 1688 (L. 5)

SUPREME COURT OF ENGLAND AND WALES

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

Made - - - - - *28th June 2002*

Laid before Parliament *1st July 2002*

Coming into force - - *24th July 2002*

We, the Crown Court Rule Committee, in exercise of the powers conferred upon us by sections 84(1) and 86 of the Supreme Court Act 1981(a) and sections 20(6), 37(5), 38(6) and 65(1) of the Youth Justice and Criminal Evidence Act 1999(b) hereby make the following Rules:

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Crown Court (Special Measures Directions and Directions Prohibiting Cross-examination) Rules 2002 and shall come into force on 24th July 2002.

(2) In these Rules—

“the Act” means the Youth Justice and Criminal Evidence Act 1999;

“the Rules” means the Crown Court Rules 1982(c).

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;

(a) 1981 c. 54.

(b) 1999 c. 23.

(c) S.I.1982/1109; the relevant amending instruments are S.I. 1992/1847 and 2000/2093 (L. 17).

- (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(a); or
 - (d) where a person is sent for trial under section 51 of the Crime and Disorder Act 1998(b), 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—
 - (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.

(a) 1991 c. 53.
(b) 1998 c. 37.

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
- (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.

PART III

DIRECTIONS PROHIBITING CROSS-EXAMINATION

Amendment of the Crown Court Rules

10.—(1) After rule 24D of the Rules(a), there shall be inserted the following rule—

“Prohibition on cross-examination of particular witness

24E.—(1) An application by the prosecutor for the court to give a direction under section 36 of the 1999 Act in relation to any witness 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.

(2) In his application the prosecutor must state why, in his opinion—

- (a) the evidence given by the witness is likely to be diminished if cross-examination is undertaken by the accused in person;
- (b) the evidence would be improved if a direction were given under section 36(2) of the 1999 Act; and
- (c) it would not be contrary to the interests of justice to give such a direction.

(3) On receipt of the application the appropriate officer of the Crown Court must refer it—

- (a) if the trial has started, to the trial judge;
- (b) if the trial has not started when the application is received—
 - (i) to the judge who has been designated to conduct the trial; or
 - (ii) if no judge has been designated for that purpose, to such judge who may be designated for the purposes of hearing that application.

(4) Where a copy of the application is received by a party to the proceedings more than 14 days before the date set for the trial to begin, that party may make observations in writing on the application to the appropriate officer of the Crown Court, but any such observations must be made within 14 days of the receipt of the application and be copied to the other parties to the proceedings.

(5) A party to whom an application is sent in accordance with paragraph (1) above who wishes to oppose the application must give his reasons for doing so to the appropriate officer of the Crown Court and the other parties to the proceedings.

(6) Those reasons must be notified—

- (a) within 14 days of the date the application was served on him, if that date is more than 14 days before the date set for the trial to begin;
- (b) if the trial has begun, in accordance with any directions issued by the trial judge; or
- (c) if neither sub-paragraph (a) nor sub-paragraph (b) apply, before the date set for the trial to begin.

(7) Where the application made in accordance with (1) above is made before the date set for the trial to begin and—

- (a) is not contested by any party to the proceedings, the court may determine the application without a hearing;
- (b) is contested by a party to the proceedings, the court must direct a hearing of the application.

(8) Where the application is made after the trial has begun—

- (a) the application may be made orally; and

(a) Rules 24B to 24D were inserted by S.I. 2000/2093 (L. 17).

(b) the trial judge may give such directions as he considers appropriate to deal with the application.

(9) Where a hearing of the application is to take place, the appropriate officer of the Crown Court shall notify each party to the proceedings of the time and place of the hearing.

(10) A party notified in accordance with paragraph (9) above may be present at the hearing and be heard.

(11) The appropriate officer of the Crown Court must, as soon as possible after the determination of an application made in accordance with paragraph (1) above, give notice of the decision and the reasons for it to all the parties to the proceedings.

(12) A person making an oral application under paragraph (8)(a) above must—

(a) give reasons why the application was not made before the trial commenced; and

(b) provide the court with the information set out in paragraph (2) above.”

(2) In each of the provisions set out in paragraph (3) below, for “section 34 or 35” substitute “section 34, 35 or 36”.

(3) Those provisions are—

(a) rule 24B(1);

(b) rule 24B(7);

(c) rule 24C(2);

(d) rule 24D(1);and

(e) rule 24D(4).

(4) In rule 24D(8) after “24C” insert “,24E”.

PART IV REVOCATIONS

Revocations

11. The following provisions in so far as still in force are revoked:—

(a) rules 23A and 23C of the Rules(a);

(b) Schedules 5 and 7 to the Rules; and

(c) the Crown Court (Amendment) Rules 1992(b).

*Irvine of Lairg, C.
Woolf, C. J
Master McKenzie Kay, L. J.
C. Hagen
P. Carter
J. V. Pegden
L. E. Dickinson
G. White*

28th June 2002

(a) Rule 23A was inserted by S.I. 1988/2160, rule 2 (substituted by S.I. 1992/1847, rule 3) and rule 23C by S.I. 1992/1847, rule 4.

(b) S.I. 1992/1847.

**FORM OF APPLICATION FOR A SPECIAL MEASURES DIRECTION UNDER SECTION 19
OF THE YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999**

An application must be made within 28 days of—

- (a) the committal of the defendant;
- (b) the consent to the preferment of the bill of indictment;
- (c) a notice of transfer;
- (d) the service of copies of the documents containing the evidence on which the charge or charges are based under the Crime and Disorder Act 1998; or
- (e) the 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 given at the same time to the other party or parties to the case.

PART A

To be completed by all applicants

<i>Details required</i>	<i>Notes</i>
<p>Details of witness</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 defence for evidence to be given through a live television 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 11 of the Criminal Justice Act 1967 (alibi).</p>
<p>Case details</p> <p>Name of Crown Prosecution Service office:</p> <p>Crown Prosecution Service number:</p> <p>Defendant(s): surname: Forenames:</p> <p>Case reference numbers: (a) unique reference number assigned by police: (b) trial number:</p> <p>Court area:</p> <p>Charges:</p>	<p>The area in which the court hearing the case is situated.</p> <p>Give brief details of those charges to which this application applies.</p>

<i>Details required</i>	<i>Notes</i>
<p>Details of application</p> <p>Specify the special measures being sought:</p> <p>State the grounds on which the witness relies in support of the application for a special measures direction:</p> <p>Give a description of evidence submitted in support of this application:</p>	<p>The statement should make clear whether the applicant seeks automatic eligibility or whether the applicant alleges that the quality of the evidence will be reduced unless a direction is given. In the latter case, the grounds on which the applicant alleges that the quality of the witness's evidence is likely to be diminished in terms of completeness, coherence and accuracy should be clearly stated.</p> <p>This requirement is optional. Examples of evidence might be: birth certificate; medical report; expert evidence; police report.</p>
<p>Arrangements which may be made available</p> <p>Give a description of the arrangements relevant to the measures applied for which may be made available in the area in which it is likely the hearing will take place:</p>	
<p>Reasons for application</p> <p>Give the grounds for believing the special measures being sought in this application will increase the quality of the witness's evidence:</p> <p>Give the views of the witness as to why the measures sought in this application are required:</p>	
<p>Material change of circumstances</p> <p>Give a description of any material change of circumstances relied upon to support this application:</p>	<p>This requirement applies only where—</p> <p>(a) a special measures direction is already in force and application is being made to discharge or vary the direction; or</p> <p>(b) a previous application for a special measures direction was refused and this application seeks to reverse that decision.</p>

PART B

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

<i>Details required</i>	<i>Notes</i>
<p>Details of application</p> <p>Give—</p> <p>(a) the address of any venue from which the witness will give evidence if the court’s own live television 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 defence need not disclose the name of the person proposed to accompany the witness if disclosure could lead to the identification of the witness.</p>
<p>Grounds</p> <p>State why it is believed that this person should accompany the witness:</p>	

PART C

To be completed if the application is to tender in evidence a video recording under section 27 of the Youth Justice and Criminal Evidence Act 1999

<i>Details required</i>	<i>Notes</i>
<p>Video recording(s)</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>

<i>Details required</i>	<i>Notes</i>
<p>Details of those present while recording made</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 defendant.</p>
<p>Equipment used</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 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>
<p>Recordings of part only of an interview</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 <i>not</i> 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>Details of copy</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>Attendance and supply of copies</p> <p>Is the witness willing and able to attend the trial 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 proceedings?</p>	<p>Where the application is by the accused, the video recording(s) do not have to be served on the prosecution until the close of the prosecution case at the trial.</p>

<i>Details required</i>	<i>Notes</i>
Has the agreement of the other parties to the video recording(s) being tendered as evidence been sought?	

Signature of applicant
or
applicant's solicitor:

Date:

.....

.....

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules contain provisions relating to applications for a special measures direction in the case of witnesses who require assistance on the grounds of age or incapacity or on the grounds of fear or distress about testifying. Rule 2 provides for application for a special measures direction to be made in the form specified in the Schedule to the Rules or a form to the like effect. Applications for a direction to give evidence by means of a live television link or by means of a video recording of the witness's testimony must provide the additional information specified in Part B or Part C of the form. Rule 3 provides rules for extending the time for making an application for a special measures direction and rule 4 provides for late applications.

Rule 5 provides for an application to be made to vary or discharge a special measures direction which has already been made. Rule 6 provides for renewal applications where a material change of circumstances has occurred since an application was refused.

Additional requirements are imposed where the application relates either to the giving of evidence by means of a live television link (rule 7) or the admission of a video recording of an interview of the witness as evidence in chief of the witness (rule 8).

Rule 9 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 10 inserts a new rule 24E in the Crown Court Rules 1982 and makes provision relating to applications for a direction preventing an accused in criminal proceedings from cross-examining a witness in person.

Rule 11 contains revocations.

2002 No. 1688 (L. 5)

SUPREME COURT OF ENGLAND AND WALES

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Directions Prohibiting Cross-examination) Rules 2002**

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