

2004 No. 2419 (L. 15)

MAGISTRATES' COURTS, ENGLAND AND WALES

**The Magistrates' Courts (Reports Relating to Adult Witnesses)
Rules 2004**

<i>Made</i> - - - -	<i>13th September 2004</i>
<i>Laid before Parliament</i>	<i>16th September 2004</i>
<i>Coming into force</i> - -	<i>7th October 2004</i>

The Lord Chancellor, in exercise of the powers conferred upon him by section 144 of the Magistrates' Courts Act 1980(a), after consultation with the Rule Committee appointed under the said section 144, hereby makes the following Rules:

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Magistrates' Courts (Reports Relating to Adult Witnesses) Rules 2004 and shall come into force on 7 October 2004.

(2) In these Rules—

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

“application for a reporting direction” is an application for a direction referred to in section 46(6) of the Act;

“application for an excepting direction” is an application for a direction referred to in section 46(9) of the Act;

“business day” means any day other than—

(i) a Saturday, Sunday, Christmas Day or Good Friday; or

(ii) a bank holiday under the Banking and Financial Dealings Act 1971(b) in England and Wales;

“court” means the Magistrates' Court.

(3) Reference to a form is a reference to a form set out in the Schedule to these Rules or a form with the same effect.

Application for a reporting direction

2.—(1) An application for a reporting direction made by a party to any criminal proceedings, in relation to a witness in those proceedings, must be made in writing in Form A or orally under rule 4.

(a) 1980 c.43; section 144 is extended by section 145 of that Act; by section 93 of the Children Act 1989 (c.41); by sections 10, 125(3) and Schedule 18 paragraph 25(7) to the Courts and Legal Services Act 1990 (c.41); by section 45 of the Justices of the Peace Act 1997 (c. 25) and by section 65(1) of the Youth Justice and Criminal Evidence Act 1999 c.23.

(b) 1971 c.80.

(2) If an application for a reporting direction is made in writing, the applicant shall send that application to the justices' chief executive for the court and copies shall be sent at the same time to every other party to those proceedings.

Opposing an application for a reporting direction

3.—(1) If an application for a reporting direction is made in writing, any party to the proceedings who wishes to oppose an application for a reporting direction must notify the applicant and the appropriate court officer in writing of his opposition and give reasons for it.

(2) A person opposing an application must state in the written notification whether he disputes that the—

- (a) witness is eligible for protection under section 46 of the Act; or
- (b) granting of protection would be likely to improve the quality of the evidence given by the witness or the level of co-operation given by the witness to any party to the proceedings in connection with that party's preparation of its case.

(3) The notification under paragraph (1) must be given within five business days of the date the application was served on him unless an extension of time is granted under rule 7.

Urgent action

4.—(1) The court may give a reporting direction under section 46 of the Act in relation to a witness in those proceedings, notwithstanding that the five business days specified in rule 3(3) have not expired if:

- (a) an application is made to it for the purposes of this rule; and
- (b) it is satisfied that, due to exceptional circumstances, it is appropriate to do so.

(2) Any party to the proceedings may make the application under paragraph (1) whether or not an application has already been made under rule 2.

(3) An application under paragraph (1) may be made orally or in writing.

(4) If an application is made orally, the court may hear and take into account representations made to it by any person who in the court's view has a legitimate interest in the application before it.

(5) The application must specify the exceptional circumstances on which the applicant relies.

Excepting direction

5.—(1) An application for an excepting direction may be made by—

- (a) any party to those proceedings; or
- (b) any person who, although not a party to the proceedings, is directly affected by a reporting direction given in relation to a witness in those proceedings.

(2) If an application for an excepting direction is made, the applicant must state why—

- (a) the effect of a reporting direction imposed places a substantial and unreasonable restriction on the reporting of the proceedings; and
- (b) it is in the public interest to remove or relax those restrictions.

(3) An application for an excepting direction may be made in writing, pursuant to paragraph (4), at any time after the commencement of the proceedings in the court or orally at a hearing of an application for a reporting direction.

(4) If the application for an excepting direction is made in writing it must be in Form B and the applicant shall send that application to the justices' chief executive for the court and copies shall be sent at the same time to every party to those proceedings.

(5) Any person served with a copy of an application for an excepting direction who wishes to oppose it must notify the applicant and the justices' chief executive for the court in writing of his opposition and give reasons for it.

(6) The notification under paragraph (5) must be given within five business days of the date the application was served on him unless an extension of time is granted under rule 7.

Variation or revocation

6.—(1) An application for the court to—

- (a) revoke a reporting direction; or
- (b) vary or revoke an excepting direction,

may be made to the court at any time after the commencement of the proceedings in the court.

(2) An application under paragraph (1) may be made by a party to the proceedings in which the direction was issued, or by a person who, although not a party to those proceedings, is in the opinion of the court directly affected by the direction.

(3) An application must be made in writing and the applicant shall send that application to the justices' chief executive for the court in which the proceedings commenced, and at the same time copies of that application must be sent to every party or, as the case may be, every party to the proceedings.

(4) The applicant must set out in his application the reasons why he seeks to have the direction varied or, as the case may be, revoked.

(5) Any person served with a copy of the application who wishes to oppose the application must notify the applicant and the justices' chief executive for the court in writing of his opposition and give reasons for it.

(6) The notification under paragraph (5) must be given within five business days of the date the application was served on him unless an extension of time is granted under rule 7.

Application for extension of time

7.—(1) An application may be made in writing to extend the period of time for notification under rules 3(3), 5(6) or 6(6) before that period has expired.

(2) An application must be accompanied by a statement setting out the reasons why the applicant is unable to give notification within that period.

(3) An application must be sent to the appropriate court officer and a copy of the application must be sent at the same time to the applicant.

Decisions of the court

8.—(1) The court may—

- (a) determine any application made under these Rules without a hearing; or
- (b) direct a hearing of any application.

(2) The justices' chief executive of the court shall notify all the parties of the court's decision as soon as reasonably practicable.

(3) If a hearing of an application is to take place, the justices' chief executive for the court shall notify each party to the proceedings of the time and place of the hearing.

(4) A court may hear and take into account representations made to it by any person who in the court's view has a legitimate interest in the application before it.

Proceedings sent or transferred to the Crown Court

9. Where proceedings in which reporting directions or excepting directions have been ordered are sent or transferred from the court to the Crown Court, the justices' chief executive shall forward copies of all relevant directions to the appropriate officer of the Crown Court to which the proceedings are sent or transferred.

Dated 13th September 2004

Falconer of Thoroton, C.

SCHEDULE

Forms

Rule 2(1)

Application for a reporting direction

(Section 46 of the Youth Justice and Criminal Evidence Act 1999)

<i>Details required</i>	<i>Notes</i>
<p>1. Details of applicant</p>	
<p>2. Details of witness</p> <p>Name of witness:</p> <p>Date of birth of witness:</p>	<p>If these details have not been given, please provide the reason below. These details need not be given where the applicant can show that there is a good reason for not providing such details in order to protect the true identity of that witness.</p>
<p>3. 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:</p> <p>(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>4. Details of application</p> <p>State the grounds on which the applicant relies in support of the application for a reporting direction:</p> <p>Give a description of evidence submitted in support of this application:</p> <p>Set out the views of the witness for whom the direction is sought on this application:</p>	<p>The statement should make clear why, in the applicant's view, if the direction is not given—</p> <p>(a) the quality of evidence given by the witness, or</p> <p>(b) the level of co-operation given by the witness to any party to the proceedings in the preparation of that party's case, is likely to be diminished by fear or distress if the witness is identified by members of the public as a witness in the proceedings.</p> <p>This requirement is optional. Examples might be— Police report Medical report</p>
<p>5. Does the application need to be determined URGENTLY (i.e. on less than 5 days' notice)?</p>	<p>If so, give reasons and specify any time-limit by which the application needs to be determined.</p>
<p>6. Public interest and interests of justice</p> <p>State why a reporting direction—</p> <p>(a) is in the interests of justice; and</p> <p>(b) is in the public interest in avoiding the imposition of a substantial and unreasonable restriction on the reporting of proceedings.</p>	
<p>Signature of applicant or applicant's Solicitor:</p>	<p>Date:</p>

<i>Details required</i>	<i>Notes</i>
Is a copy of the reporting direction attached:	reporting direction if available.
<p>4. Details of application</p> <p>State the extent to which you invite the court to dispense with the restrictions imposed by the reporting direction. In particular state why–</p> <p>(a) a reporting direction is or would be a substantial and unreasonable restriction on the reporting of the proceedings and it is in the public interest to remove or relax that restriction; or</p> <p>(b) why it would be in the interests of justice to do so.</p> <p>If the applicant is not a party to the proceedings, state why they are directly affected by a reporting direction given in relation to a witness in those proceedings.</p>	
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 reporting directions in respect of adult witnesses under section 46 of the Youth Justice and Criminal Evidence Act 1999. A reporting direction is a direction by the court that no matter relating to the witness is to be included in any publication during the witness's lifetime if it is likely to lead members of the public to identify him as a witness in proceedings.

Rule 2 provides for applications for a reporting direction. Rule 3 provides that any party to the proceedings who seeks to oppose the application for a reporting direction must do so by notifying the court as well as all parties to those proceedings. Rule 4 makes provision for urgent applications to the court to make a reporting direction in exceptional circumstances.

Rule 5 contains provision for applications for an excepting direction to dispense with the restrictions imposed by a reporting direction. Rule 6 contains provision relating to applications for the revocation of reporting directions or the variation or revocation of excepting directions. Rule 7 contains provision for extensions of time.

Rule 9 provides that where proceedings are sent or transferred to the Crown Court, copies of all relevant directions must be provided to that court.

STATUTORY INSTRUMENTS

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**The Magistrates' Courts (Reports Relating to Adult Witnesses)
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