
STATUTORY INSTRUMENTS

2005 No. 384

The Criminal Procedure Rules 2005

PART 29

SPECIAL MEASURES DIRECTIONS

Video recording of testimony from witnesses

29.7.—(1) Where an application is made to a magistrates' court or the Crown Court 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 29.1(1) 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) of this rule; 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) of this rule.

(4) The statement of the circumstances in which the video recording was made referred to in paragraphs (2)(f) and (3) of this rule 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) If the special measures directions enabling a video recording of an interview of a witness to be admitted as evidence in chief of the witness with provision for the examination of the witness to be conducted through an intermediary, the information to be provided under paragraph (4)(c) shall be the same as that for other persons present at the recording but with the addition of details of the declaration made by the intermediary under rule 29.9.

(6) If the special measures directions enabling a video recording of an interview of a witness to be admitted as evidence in chief of the witness with provision for the witness, in accordance with section 30 of the Youth Justice and Criminal Evidence Act 1999, to be provided with a device as an aid to communication during the video recording of the interview the information to be included under paragraph (4)(d) shall include also details of any such device used for the purposes of recording.

(7) A party who receives a recording under paragraph (2) must within 14 days of its receipt, notify the applicant and the court officer, in writing—

- (a) whether he objects to the admission under section 27 of the 1999 Act⁽¹⁾ 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.

(8) A party who seeks to oppose an application for a special measures direction enabling a video recording of an interview of a child witness to be admitted as evidence in chief of the witness must, in order to comply with rule 29.1(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.

(9) However, paragraph (8) does not apply if the witness is a child witness in need of special protection.

(10) Notwithstanding the provisions of rule 29.1 and this rule, any video recording which the defendant proposes to tender in evidence need not be sent to the prosecution until the close of the prosecution case at the trial.

(11) The court may determine an application by the defendant to tender in evidence a video recording even though the recording has not, in accordance with paragraph (10), been served upon the prosecution.

(1) Section 27 was amended by the Courts Act 2003 (c. 39), Schedule 8, paragraph 384(b); it is further amended by the Criminal Justice Act 2003 (c. 44), Schedule 3, Part 2, paragraph 73(1), (2) and Schedule 37, Part 4, with effect from a date to be appointed.

(12) 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.

(13) An application under paragraph (12) may be made orally to the court.

(14) A prosecutor who makes an application under paragraph (12) must state—

- (a) why he objects to the admission under section 27 of the 1999 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.

(15) 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.

(16) The court officer must notify all parties to the proceedings of the decision of the court as soon as may be reasonable after the decision is given.

(17) 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.

[Note. Formerly rule 8 of the Magistrates' Courts (Special Measures Directions) Rules 2002 and rule 8 of the Crown Court (Special Measures Directions and Directions Prohibiting Cross-examination) Rules 2002. As to the use of video-recorded evidence in chief see also direction IV.40 in the Practice Direction.]