
STATUTORY INSTRUMENTS

2009 No. 2041

The Armed Forces (Court Martial) Rules 2009

PART 12

EVIDENCE

CHAPTER 6

Special measures directions

Video recorded evidence in chief

95.—(1) A special measures direction may not provide for a video recording, or a part of such a recording, to be admitted under section 27 of the 1999 Act if the judge advocate is of the opinion, having regard to all the circumstances of the case, that in the interests of justice the recording, or that part of it, should not be so admitted.

(2) In considering for the purposes of paragraph (1) whether any part of a recording should not be so admitted, the judge advocate must consider whether any prejudice to a defendant which might result from that part being so admitted is outweighed by the desirability of showing the whole, or substantially the whole, of the recorded interview.

(3) Where a special measures direction provides for a recording to be admitted under section 27 of the 1999 Act, the judge advocate may nevertheless subsequently direct that it is not to be so admitted if—

- (a) it appears to the judge advocate that—
 - (i) the witness will not be available for cross-examination (whether conducted in the ordinary way or in accordance with any such direction), and
 - (ii) the parties to the proceedings have not agreed that there is no need for the witness to be so available; or
- (b) rule 98 has not been complied with to the satisfaction of the judge advocate.

(4) Paragraph (3) is without prejudice to rule 99 (power to vary or discharge special measures direction).

(5) Where a recording is admitted under section 27 of the 1999 Act—

- (a) the witness must be called by the party tendering it in evidence, unless the parties to the proceedings have agreed that there is no need for the witness to be called; and
- (b) the witness may not give evidence in chief otherwise than by means of the recording—
 - (i) as to any matter which, in the opinion of the judge advocate, has been dealt with adequately in the witness's recorded testimony; or
 - (ii) without the leave of the judge advocate, as to any other matter which, in the opinion of the judge advocate, is dealt with in that testimony.

(6) Where a special measures direction provides for part only of a recording to be admitted under section 27 of the 1999 Act, references in paragraphs (3) and (4) to the recording or to the witness's recorded testimony are references to the part of the recording or testimony which is to be so admitted.

(7) The judge advocate may give leave for the purposes of paragraph (5)(b)(ii) if it appears to him to be in the interests of justice to do so, and may do so either—

- (a) on an application by a party to the proceedings; or
- (b) of his own motion.