
STATUTORY INSTRUMENTS

2012 No. 1726

The Criminal Procedure Rules 2012

PART 37

TRIAL AND SENTENCE IN A MAGISTRATES' COURT

Evidence of a witness in person

37.4.—(1) This rule applies where a party wants to introduce evidence by calling a witness to give that evidence in person.

(2) Unless the court otherwise directs—

(a) a witness waiting to give evidence must not wait inside the courtroom, unless that witness is—

(i) a party, or

(ii) an expert witness;

(b) a witness who gives evidence in the courtroom must do so from the place provided for that purpose; and

(c) a witness' address must not be announced unless it is relevant to an issue in the case.

(3) Unless other legislation otherwise provides, before giving evidence a witness must take an oath or affirm.

(4) In the following sequence—

(a) the party who calls a witness must ask questions in examination-in-chief;

(b) every other party may ask questions in cross-examination;

(c) the party who called the witness may ask questions in re-examination.

(5) If other legislation so permits, at any time while giving evidence a witness may refer to a record of that witness' recollection of events.

(6) The justices' legal adviser or the court may—

(a) ask a witness questions; and in particular

(b) where the defendant is not represented, ask any question necessary in the defendant's interests.

[Note. Section 53 of the Youth Justice and Criminal Evidence Act 1999(1) provides that everyone is competent to give evidence in criminal proceedings unless unable to understand questions put or give intelligible answers. See also section 1 of the Criminal Evidence Act 1898(2).]

(1) 1999 c. 23.

(2) 1898 c. 36; section 1 was amended by section 1 of the Criminal Evidence Act 1979 (c. 16), section 78 of, and Schedule 16 to, the Criminal Justice Act 1982 (c. 48), sections 80(9) and 119(2) of, and Schedule 7 to, the Police and Criminal Evidence Act 1984 (c. 60), sections 31 and 168 of, and paragraph 2 of Schedule 10, and Schedule 11 to, the Criminal Justice and Public Order Act 1994 (c. 33), section 67 of, and paragraph 1 of Schedule 4, and Schedule 6 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23) and sections 331 and 332 of, and paragraph 80 of Schedule 36, and Part 5 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44).

Sections 1, 3, 5 and 6 of the Oaths Act 1978⁽³⁾ provide for the taking of oaths and the making of affirmations, and for the words that must be used. Section 28 of the Children and Young Persons Act 1963⁽⁴⁾ provides that in a youth court, and where a witness in any court is under 18, an oath must include the words ‘I promise’ in place of the words ‘I swear’. Under sections 55 and 56 of the Youth Justice and Criminal Evidence Act 1999, a person may give evidence without taking an oath, or making an affirmation, where that person (i) is under 14 or (ii) has an insufficient appreciation of the solemnity of the occasion and of the particular responsibility to tell the truth which is involved in taking an oath.

The questions that may be put to a witness—

- (a) by a party are governed by rules of evidence, for example—
 - (i) the rule that a question must be relevant to what is in issue,
 - (ii) the rule that the party who calls a witness must not ask that witness a leading question about what is in dispute, and
 - (iii) the rule that a party who calls a witness may contradict that witness only in limited circumstances (see section 3 of the Criminal Procedure Act 1865)⁽⁵⁾;
- (b) by the justices’ legal adviser or the court are in their discretion, but that is subject to—
 - (i) rules of evidence, and
 - (ii) rule 1.3 (the application by the court of the overriding objective).

Under sections 34, 35 and 36 of the Youth Justice and Criminal Evidence Act 1999⁽⁶⁾, a defendant who is not represented may not cross-examine a witness where—

- (a) the defendant is charged with a sexual offence against the witness;
- (b) the defendant is charged with a sexual offence, or one of certain other offences, and the witness is a child; or
- (c) the court prohibits the defendant from cross-examining the witness.

Part 31 contains rules relevant to restrictions on cross-examination.

Under section 139 of the Criminal Justice Act 2003⁽⁷⁾, a witness may refresh his or her memory by referring to a record made before the hearing, either contained in a document made or verified by the witness, or in the transcript of a sound recording, if—

- (a) the witness states that it records his or her recollection of events at that earlier time; and
- (b) that recollection is likely to have been significantly better when the record was made than at the time of the hearing.

In some circumstances, a witness may give evidence in accordance with special measures directed by the court under section 19 of the Youth Justice and Criminal Evidence Act 1999⁽⁸⁾, or by live link under section 32 of the Criminal Justice Act 1988⁽⁹⁾ or section 51 of the Criminal Justice Act 2003. Parts 29 and 30 contain relevant rules.]

(3) 1978 c. 19.

(4) 1963 c. 37; section 28 was amended by section 2 of the Oaths Act 1978 (c. 19) and section 100 of, and paragraph 40 of Schedule 11 to, the Criminal Justice Act 1991 (c. 53).

(5) 1865 c. 18.

(6) 1999 c. 23; section 35 was amended by sections 139 and 140 of, and paragraph 41 of Schedule 6 and Schedule 7 to, the Sexual Offences Act 2003 (c. 42) and section 148 of, and paragraphs 35 and 36 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4).

(7) 2003 c. 44.

(8) 1999 c. 23.

(9) 1988 c. 33; section 32 was amended by section 55 of the Criminal Justice Act 1991 (c. 53), section 29 of, and paragraph 16 of Schedule 2 to, the Criminal Appeal Act 1995 (c. 35), section 62 of the Criminal Procedure and Investigations Act 1996 (c. 25), section 67 of, and Schedule 6 and paragraph 3 of Schedule 7 to, the Youth Justice and Criminal Evidence Act 1999 (c. 23) and paragraphs 24 and 26 of the Schedule to S.I. 2004/2035.

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