
STATUTORY INSTRUMENTS

2012 No. 1726

The Criminal Procedure Rules 2012

PART 31

**RESTRICTION ON CROSS-EXAMINATION
BY A DEFENDANT ACTING IN PERSON**

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Restrictions on cross-examination of witness

31.1.—(1) This rule and rules 31.2 and 31.3 apply where an accused is prevented from cross-examining a witness in person by virtue of section 34, 35 or 36 of the Youth Justice and Criminal Evidence Act 1999⁽¹⁾.

(2) The court shall explain to the accused as early in the proceedings as is reasonably practicable that he—

- (a) is prevented from cross-examining a witness in person; and
- (b) should arrange for a legal representative to act for him for the purpose of cross-examining the witness.

(3) The accused shall notify the court officer within 7 days of the court giving its explanation, or within such other period as the court may in any particular case allow, of the action, if any, he has taken.

(4) Where he has arranged for a legal representative to act for him, the notification shall include details of the name and address of the representative.

(5) The notification shall be in writing.

(6) The court officer shall notify all other parties to the proceedings of the name and address of the person, if any, appointed to act for the accused.

(7) Where the court gives its explanation under paragraph (2) to the accused either within 7 days of the day set for the commencement of any hearing at which a witness in respect of whom a prohibition under section 34, 35 or 36 of the 1999 Act applies may be cross-examined or after such

⁽¹⁾ 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), section 148 of, and paragraphs 35 and 36 of Schedule 26 to, the Criminal Justice and Immigration Act 2008 (c. 4) and section 105 of the Coroners and Justice Act 2009 (c. 25).

a hearing has commenced, the period of 7 days shall be reduced in accordance with any directions issued by the court.

(8) Where at the end of the period of 7 days or such other period as the court has allowed, the court has received no notification from the accused it may grant the accused an extension of time, whether on its own motion or on the application of the accused.

(9) Before granting an extension of time, the court may hold a hearing at which all parties to the proceedings may attend and be heard.

(10) Any extension of time shall be of such period as the court considers appropriate in the circumstances of the case.

(11) The decision of the court as to whether to grant the accused an extension of time shall be notified to all parties to the proceedings by the court officer.

Appointment of legal representative by the court

31.2.—(1) Where the court decides, in accordance with section 38(4) of the Youth Justice and Criminal Evidence Act 1999, to appoint a qualified legal representative, the court officer shall notify all parties to the proceedings of the name and address of the representative.

(2) An appointment made by the court under section 38(4) of the 1999 Act shall, except to such extent as the court may in any particular case determine, terminate at the conclusion of the cross-examination of the witness or witnesses in respect of whom a prohibition under section 34, 35 or 36 of the 1999 Act applies.

Appointment arranged by the accused

31.3.—(1) The accused may arrange for the qualified legal representative, appointed by the court under section 38(4) of the Youth Justice and Criminal Evidence Act 1999, to be appointed to act for him for the purpose of cross-examining any witness in respect of whom a prohibition under section 34, 35 or 36 of the 1999 Act applies.

(2) Where such an appointment is made—

- (a) both the accused and the qualified legal representative appointed shall notify the court of the appointment; and
- (b) the qualified legal representative shall, from the time of his appointment, act for the accused as though the arrangement had been made under section 38(2)(a) of the 1999 Act and shall cease to be the representative of the court under section 38(4).

(3) Where the court receives notification of the appointment either from the qualified legal representative or from the accused but not from both, the court shall investigate whether the appointment has been made, and if it concludes that the appointment has not been made, paragraph (2)(b) shall not apply.

(4) An accused may, notwithstanding an appointment by the court under section 38(4) of the 1999 Act, arrange for a legal representative to act for him for the purpose of cross-examining any witness in respect of whom a prohibition under section 34, 35 or 36 of the 1999 Act applies.

(5) Where the accused arranges for, or informs the court of his intention to arrange for, a legal representative to act for him, he shall notify the court, within such period as the court may allow, of the name and address of any person appointed to act for him.

(6) Where the court is notified within the time allowed that such an appointment has been made, any qualified legal representative appointed by the court in accordance with section 38(4) of the 1999 Act shall be discharged.

(7) The court officer shall, as soon as reasonably practicable after the court receives notification of an appointment under this rule or, where paragraph (3) applies, after the court is satisfied that the appointment has been made, notify all the parties to the proceedings—

- (a) that the appointment has been made;
- (b) where paragraph (4) applies, of the name and address of the person appointed; and
- (c) that the person appointed by the court under section 38(4) of the 1999 Act has been discharged or has ceased to act for the court.

Prohibition on cross-examination of witness

31.4.—(1) An application by the prosecutor for the court to give a direction under section 36 of the Youth Justice and Criminal Evidence Act 1999 in relation to any witness must be sent to the court officer 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 court officer must refer it—

- (a) if the trial has started, to the court of trial; or
- (b) if the trial has not started when the application is received—
 - (i) to the judge or court designated to conduct the trial, or
 - (ii) if no judge or court has been designated for that purpose, to such judge or court 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 court officer, 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) who wishes to oppose the application must give his reasons for doing so to the court officer 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 court; or
- (c) if neither paragraph (6)(a) nor (b) applies, before the date set for the trial to begin.

(7) Where the application made in accordance with paragraph (1) 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

- (b) the court may give such directions as it considers appropriate to deal with the application.
- (9) Where a hearing of the application is to take place, the court officer shall notify each party to the proceedings of the time and place of the hearing.
- (10) A party notified in accordance with paragraph (9) may be present at the hearing and be heard.
- (11) The court officer must, as soon as possible after the determination of an application made in accordance with paragraph (1), 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) 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).