
STATUTORY INSTRUMENTS

2015 No. 1812

**The Armed Forces (Service Courts
Rules) (Amendment) Rules 2015**

Summary Appeal Court rules

6. After rule 74C insert—

“CHAPTER 7

Special Measures Directions

Interpretation of Chapter 7

74D.—(1) In this Chapter—

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

“eligible witness” means a witness eligible for assistance by virtue of rule 74E or 74F;

“intermediary” has the same meaning as in section 29 of the 1999 Act;

“special measures direction” means a direction providing for one or more of the special measures available in relation to a witness to apply to evidence given by the witness;

“the special measures provisions” means the provisions of Chapter 1 of Part 2 of the 1999 Act applied by an order under section 61(1) of that Act.

(2) In this Chapter—

(a) references to the quality of a witness’s evidence are to its quality in terms of completeness, coherence and accuracy (and for this purpose “coherence” refers to a witness’s ability in giving evidence to give answers which address the questions put to the witness and can be understood both individually and collectively); and

(b) references to the special measures available in relation to a witness are to be construed in accordance with rule 74G.

Witnesses eligible for assistance on grounds of age or incapacity

74E.—(1) A witness is eligible for assistance by virtue of this rule if the witness is under the age of 18 at the time when it falls to the judge advocate to consider whether to give a special measures direction in relation to the witness.

(2) A witness is also eligible for assistance by virtue of this rule if the judge advocate considers that the quality of evidence given by the witness is likely to be diminished because the witness—

(a) suffers from mental disorder within the meaning of the Mental Health Act 1983;

(b) otherwise has a significant impairment of intelligence and social functioning; or

(c) has a physical disability or is suffering from a physical disorder.

Witnesses eligible for assistance on grounds of fear or distress about testifying

74F. A witness (other than an appellant) is eligible for assistance by virtue of this rule if the judge advocate is satisfied that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings.

Special measures available

74G.—(1) Where a witness (other than an appellant) is eligible for assistance by virtue of rule 74E, the special measures available in relation to him are those for which provision is made by sections 23, 25 to 27, 29 and 30 of the 1999 Act.

(2) Where a witness is eligible for assistance by virtue of rule 74F, the special measures available in relation to him are those for which provision is made by sections 23 and 25 to 27 of that Act.

(3) Where an appellant is eligible for assistance by virtue of rule 74E, the special measures available in relation to him are those for which provision is made by sections 29 and 30 of that Act.

Special measures direction relating to eligible witness

74H.—(1) Subject to the special measures provisions and this Chapter, a judge advocate may give a special measures direction in relation to a witness if—

- (a) the witness is an eligible witness; and
- (b) any of the special measures available in relation to the witness (or any combination of them) would, in the judge advocate’s opinion, be likely to improve the quality of evidence given by the witness.

(2) A special measures direction must specify particulars of the provision made by the direction in respect of each special measure which is to apply to the witness’s evidence.

(3) In determining whether any special measure or measures would be likely to improve the quality of evidence given by the witness, and if so whether to give a direction providing for the measure or measures to apply, a judge advocate must consider all the circumstances of the case, including in particular—

- (a) any views expressed by the witness; and
- (b) whether the measure or measures might tend to inhibit such evidence being effectively tested by a party to the proceedings.

(4) A special measures direction may provide for one or more special measures to apply in combination with a direction under rule 25 (live links), and for the purposes of this Chapter a measure would be likely to improve the quality of the witness’s evidence if, were it combined with such a direction, it would be likely to do so.

(5) A judge advocate may give a special measures direction—

- (a) on an application made by a party to the proceedings; or
- (b) of the judge advocate’s own motion.

(6) A judge advocate who gives, or refuses an application for, a special measures direction must state in open court his reasons for doing so.

(7) Nothing in this Chapter is to be regarded as affecting any power of the court or a judge advocate to make an order or give leave of any description—

- (a) in relation to a witness who is not an eligible witness; or

- (b) in relation to an eligible witness, where the order is made or the leave is given otherwise than by reason of the fact that the witness is an eligible witness.

Evidence given in private

74I. A special measures direction may not provide for the exclusion of persons under section 25 of the 1999 Act unless it appears to the judge advocate that there are reasonable grounds for believing that any person other than an appellant has sought, or will seek, to intimidate the witness in connection with testifying in the proceedings.

Video recorded evidence in chief

74J.—(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 an appellant 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 74M has not been complied with to the satisfaction of the judge advocate.

(4) Paragraph (3) is without prejudice to rule 74N (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.

Examination of witness through intermediary

74K.—(1) Any examination of a witness conducted in pursuance of a provision included in a special measures direction by virtue of section 29(1) of the 1999 Act (examination of witness through intermediary) must take place—

- (a) in the presence of such persons as the direction may provide; and
- (b) in circumstances in which the members of the court, and legal representatives acting in the proceedings, are able to see and hear the examination of the witness and to communicate with the intermediary (and for this purpose any impairment of eyesight or hearing is to be disregarded).

(2) Where two or more legal representatives are acting for a party to the proceedings, paragraph (1)(b) is to be regarded as satisfied in relation to those representatives if at all material times it is satisfied in relation to at least one of them.

(3) Before an intermediary begins to act, he shall make a declaration in the following form:

“I solemnly, sincerely and truly declare that I will well and faithfully communicate the questions and answers and make true explanation of all matters and things as shall be required of me according to the best of my skill and understanding.”

(4) In this rule “the intermediary” has the same meaning as in section 29 of the 1999 Act.

Application for special measures direction: general

74L.—(1) An application for a special measures direction must be made in writing to the court administration officer, unless a judge advocate gives leave for it to be made orally.

(2) A written application must specify—

- (a) unless the application is made by an appellant and does not relate to evidence in support of an alibi, the name and date of birth of the witness in relation to whom it is made;
- (b) the special measure or measures sought;
- (c) where the application is for a direction including provision by virtue of section 27 of the 1999 Act (video recorded evidence in chief), the information mentioned in rule 74M(4);
- (d) the grounds on which the applicant asserts—
 - (i) that the witness is an eligible witness; and
 - (ii) that the measure or measures will improve the quality of the witness’s evidence; and
- (e) the views of the witness as to the matters specified in accordance with subparagraph (d).

(3) In paragraph (2)(a) “evidence in support of an alibi” has the same meaning as in article 7 of the CPIA Order.

(4) A written application must be made, and a copy served on all other parties to the proceedings—

- (a) where the application is made by the Director, not more than 14 days after the Director serves advance information in respect of the charge to which the proposed evidence relates;

- (b) where the application is made by an appellant, not more than 14 days after the Director complies or purports to comply with article 4 of the CPIA Order.
- (5) Notwithstanding paragraph (4), a judge advocate may at his discretion consider a written application made outside the period of 14 days there mentioned.
- (6) Where a written application has been made, a judge advocate may—
 - (a) grant the application without a hearing; or
 - (b) direct a hearing.
- (7) But the application may not be granted without a hearing unless—
 - (a) at least 14 days have elapsed since the application was served on each other party to the proceedings; and
 - (b) no other party has served notice on the court administration officer that he opposes the application.
- (8) Any party to the proceedings—
 - (a) may attend a hearing of the application, and be heard;
 - (b) may, with leave of the judge advocate, adduce evidence (including expert evidence) at the hearing.

Application for special measures direction permitting admission of video recorded evidence in chief

74M.—(1) This rule applies where an application is made for a special measures direction including provision by virtue of section 27 of the 1999 Act.

(2) The application must be accompanied by a copy of the video recording which (or part of which) it is proposed to tender in evidence.

(3) Where the application is made by the Director, he must at the same time serve on the appellant a copy of that recording.

(4) The application must include the following information—

- (a) the date on which the recording was made;
- (b) the times at which the recording commenced and finished, including details of any interruptions;
- (c) the address of the premises where the recording was made, and the usual function of those premises;
- (d) in relation to each person present at any point during, or immediately before, the recording—
 - (i) the name, age and occupation of the person;
 - (ii) the time for which he was present; and
 - (iii) his relationship (if any) to the witness;
- (e) 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

(f) if the recording is a copy—

(i) the location of the master recording; and

(ii) details of when and by whom the copy was made.

(5) Where the applicant is an appellant and the application is granted, the applicant must, not later than the close of the case for the prosecution, serve on each other party to the proceedings a copy of the video recording which (or part of which) it is proposed to tender in evidence under the direction.

Variation or discharge of special measures direction

74N.—(1) A judge advocate may vary or discharge a special measures direction if it appears to him to be in the interests of justice to do so.

(2) A judge advocate may exercise the power conferred by paragraph (1)—

(a) on an application made by a party to the proceedings; or

(b) of the judge advocate's own motion.

(3) An application under this rule must be made in writing to the court administration officer, unless—

(a) a judge advocate gives leave for it to be made orally; or

(b) paragraph (8) applies.

(4) A copy of a written application under this rule must be served on each other party to the proceedings.

(5) Where a written application has been made under this rule, a judge advocate may—

(a) grant the application without a hearing; or

(b) direct a hearing.

(6) But the application may not be granted without a hearing unless—

(a) at least 14 days have elapsed since the application was served on each other party to the proceedings; and

(b) no other party has served notice on the court administration officer that he opposes the application.

(7) Rule 74L(8) applies in relation to a hearing of the application as it applies in relation to a hearing of an application for a special measures direction.

(8) Where the direction was made on the application of an appellant and includes provision for the admission of a video recording which had not been served on the Director, the Director may make an oral application without leave.

(9) A judge advocate who varies or discharges, or refuses an application for the variation or discharge of, a special measures direction must state in open court his reasons for doing so.

(10) In this rule, references to the variation of a special measures direction include the further variation of a direction previously varied.

Warning to lay members

74O. Where in proceedings with lay members evidence has been given in accordance with a special measures direction, the judge advocate must give the lay members such

warning (if any) as he considers necessary to ensure that the fact that the direction was given in relation to the witness does not prejudice the appellant.”.