
STATUTORY INSTRUMENTS

2017 No. 755

The Criminal Procedure (Amendment No. 3) Rules 2017

Amendments to the Criminal Procedure Rules 2015

7. In Part 18 (Measures to assist a witness or defendant to give evidence)—
- (a) in rule 18.24 (Content of application for a live link direction)—
- (i) the existing text becomes paragraph (1),
- (ii) after paragraph (1) insert—
- “(2) An applicant for a live link direction under section 32 of the Criminal Justice Act 1988⁽¹⁾ who wants the court also to make a European investigation order must—
- (a) identify the participating State in which, and the place in that State from which, the witness will give evidence;
- (b) explain why it is necessary and proportionate to make a European investigation order;
- (c) if applicable, explain how the requirements of regulation 14 of the Criminal Justice (European Investigation Order) Regulations 2017⁽²⁾ are met (Hearing a person by videoconference or telephone); and
- (d) attach a draft order in the form required by regulation 8 of the 2017 Regulations (Form and content of a European investigation order) and Directive 2014/41/EU.
- (3) Where the court makes a European investigation order, the court officer must promptly—
- (a) issue an order in the form required by regulation 8 of the 2017 Regulations (Form and content of a European investigation order) and Directive 2014/41/EU;
- (b) where the applicant is a constable or a prosecuting authority, serve that order on the applicant;
- (c) in any other case, serve that order on the appropriate authority in the participating State in which the measure or measures are to be carried out.”, and
- (iii) in the note to the rule, for “and section 51 of the Criminal Justice Act 2003⁽³⁾” substitute “, section 51 of the Criminal Justice Act 2003 and regulation 6 of the Criminal Justice (European Investigation Order) Regulations 2017”;
- (b) in rule 18.25 (Application to discharge a live link direction)—

(1) 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.

(2) S.I. 2017/730.

(3) 2003 c. 44.

- (i) for the heading to the rule substitute “Application to discharge a live link direction, etc.”,
- (ii) after paragraph (2) insert—
 - “(3) An applicant for the variation or revocation of a European investigation order made on an application under rule 18.24 must demonstrate that the applicant is, as the case may be—
 - (a) the person who applied for the order;
 - (b) a prosecuting authority; or
 - (c) any other person affected by the order.
 - (4) Where the court varies or revokes such an order, the court officer must promptly notify the appropriate authority in the participating State in which the measure or measures are to be carried out.”, and
- (iii) in the note to the rule, for “and section 52(3) of the Criminal Justice Act 2003” substitute “, section 52(3) of the Criminal Justice Act 2003 and regulation 10 of the Criminal Justice (European Investigation Order) Regulations 2017”;
- (c) amend the table of contents correspondingly; and
- (d) in the note headed “Live link direction” at the end of the Part, after the second paragraph insert—

“The Criminal Justice (European Investigation Order) Regulations 2017 give effect in the United Kingdom to [Directive 2014/41/EU](#) of the European Parliament and of the Council regarding the European Investigation Order in criminal matters. Under regulation 6 of the 2017 Regulations the court can make an order specifying one or more ‘investigative measures’ that are to be carried out in a State listed in Schedule 2 to those Regulations (a ‘participating State’). One such measure is hearing in proceedings in England and Wales, by live video or, potentially, audio link (described in the Regulations as ‘videoconference or other audio visual transmission’ and as ‘telephone conference’ respectively), a witness who is in a participating State. See also regulations 6(4)(c) and 14 of the 2017 Regulations, and regulation 9 which governs the transmission of an order to the participating State.

Under regulations 6(4)(b) and 11 of the 2017 Regulations any such measure must be one that could have been ordered or undertaken under the same conditions in a similar domestic case; but under regulation 11(5) that does not require the court to take into account any provision of domestic law imposing a procedural requirement which the court considers cannot effectively be applied when making a European investigation order for the measure concerned.”.