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STATUTORY INSTRUMENTS

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**2020 No. 759**

**The Criminal Procedure Rules 2020**

**PART 18**

**MEASURES TO ASSIST A WITNESS OR DEFENDANT TO GIVE EVIDENCE**

*SPECIAL MEASURES DIRECTIONS*

**Exercise of court's powers**

**18.8.** The court may decide whether to give, vary or discharge a special measures direction—

- (a) at a hearing, in public or in private, or without a hearing; and
- (b) in a party's absence, if that party—
  - (i) applied for the direction, variation or discharge, or
  - (ii) has had at least 10 business days in which to make representations.

**Special measures direction without application**

**18.9.—**(1) This rule applies where—

- (a) a party notifies the court that a witness is eligible for assistance under section 16 or section 17 of the Youth Justice and Criminal Evidence Act 1999;
  - (b) the notice is given at—
    - (i) a preparation for trial hearing in a magistrates' court, or
    - (ii) a plea and trial preparation hearing in the Crown Court; and
  - (c) no other party opposes the giving of a special measures direction for the benefit of that witness.
- (2) The court may exercise its power to give a special measures direction without requiring an application under rule 18.10.
- (3) The party who gives the notice must—
- (a) provide any information that the court may need to assess—
    - (i) the measure or measures likely to maximise so far as practicable the quality of the witness' evidence, and
    - (ii) the witness' own views; and
  - (b) where a direction provides for video recorded evidence to be admitted under section 27 or section 28 of the Youth Justice and Criminal Evidence Act 1999, as soon as reasonably practicable serve such evidence on—
    - (i) the court officer, and
    - (ii) each other party.

*[Note. Under sections 21 and 22 of the Youth Justice and Criminal Evidence Act 1999, a ‘child witness’ is one who is under 18, and a ‘qualifying witness’ is one who was a child witness when interviewed.*

*Under those sections, the ‘primary rule’ requires the court to give a direction—*

- (a) for the evidence of a child witness or of a qualifying witness to be admitted—*
  - (i) by means of a video recording of an interview with the witness, in the place of examination-in-chief, and*
  - (ii) after that, by live link; or*
- (b) if one or both of those measures is not taken, for the witness while giving evidence to be screened from seeing the defendant.*

*The primary rule always applies unless—*

- (a) the witness does not want it to apply, and the court is satisfied that to omit a measure usually required by that rule would not diminish the quality of the witness’ evidence; or*
- (b) the court is satisfied that to direct one of the measures usually required by that rule would not be likely to maximise, so far as practicable, the quality of the witness’ evidence.]*

### **Content of application for a special measures direction**

**18.10.** An applicant for a special measures direction must—

- (a) explain how the witness is eligible for assistance;
- (b) explain why special measures would be likely to improve the quality of the witness’ evidence;
- (c) propose the measure or measures that in the applicant’s opinion would be likely to maximise, so far as practicable, the quality of that evidence;
- (d) report any views that the witness has expressed about—
  - (i) his or her eligibility for assistance,
  - (ii) the likelihood that special measures would improve the quality of his or her evidence, and
  - (iii) the measure or measures proposed by the applicant;
- (e) in a case in which a child witness or a qualifying witness does not want the primary rule to apply, provide any information that the court may need to assess the witness’ views;
- (f) in a case in which the applicant proposes that the witness should give evidence by live link—
  - (i) identify someone to accompany the witness while the witness gives evidence,
  - (ii) name that person, if possible, and
  - (iii) explain why that person would be an appropriate companion for the witness, including the witness’ own views;
- (g) in a case in which the applicant proposes the admission of video recorded evidence, identify—
  - (i) the date and duration of the recording, and
  - (ii) which part the applicant wants the court to admit as evidence, if the applicant does not want the court to admit all of it;
- (h) attach any other material on which the applicant relies; and
- (i) if the applicant wants a hearing, ask for one, and explain why it is needed.

*[Note. The Practice Direction sets out a form of application for use in connection with this rule.]*

### **Application to vary or discharge a special measures direction**

- 18.11.**—(1) A party who wants the court to vary or discharge a special measures direction must—
- (a) apply in writing, as soon as reasonably practicable after becoming aware of the grounds for doing so; and
  - (b) serve the application on—
    - (i) the court officer, and
    - (ii) each other party.
- (2) The applicant must—
- (a) explain what material circumstances have changed since the direction was given (or last varied, if applicable);
  - (b) explain why the direction should be varied or discharged; and
  - (c) ask for a hearing, if the applicant wants one, and explain why it is needed.

*[Note. Under section 20 of the Youth Justice and Criminal Evidence Act 1999, the court can vary or discharge a special measures direction—*

- (a) *on application, if there has been a material change of circumstances; or*
- (b) *on the court's own initiative.]*

### **Application containing information withheld from another party**

- 18.12.**—(1) This rule applies where—
- (a) an applicant serves an application for a special measures direction, or for its variation or discharge; and
  - (b) the application includes information that the applicant thinks ought not be revealed to another party.
- (2) The applicant must—
- (a) omit that information from the part of the application that is served on that other party;
  - (b) mark the other part to show that, unless the court otherwise directs, it is only for the court; and
  - (c) in that other part, explain why the applicant has withheld that information from that other party.
- (3) Any hearing of an application to which this rule applies—
- (a) must be in private, unless the court otherwise directs; and
  - (b) if the court so directs, may be, wholly or in part, in the absence of a party from whom information has been withheld.
- (4) At any hearing of an application to which this rule applies—
- (a) the general rule is that the court must consider, in the following sequence—
    - (i) representations first by the applicant and then by each other party, in all the parties' presence, and then
    - (ii) further representations by the applicant, in the absence of a party from whom information has been withheld; but
  - (b) the court may direct other arrangements for the hearing.

*[Note. See section 20 of the Youth Justice and Criminal Evidence Act 1999.]*

### **Representations in response**

- 18.13.**—(1) This rule applies where a party wants to make representations about—
- (a) an application for a special measures direction;
  - (b) an application for the variation or discharge of such a direction; or
  - (c) a direction, variation or discharge that the court proposes on its own initiative.
- (2) Such a party must—
- (a) serve the representations on—
    - (i) the court officer, and
    - (ii) each other party;
  - (b) do so not more than 10 business days after, as applicable—
    - (i) service of the application, or
    - (ii) notice of the direction, variation or discharge that the court proposes; and
  - (c) ask for a hearing, if that party wants one, and explain why it is needed.
- (3) Where representations include information that the person making them thinks ought not be revealed to another party, that person must—
- (a) omit that information from the representations served on that other party;
  - (b) mark the information to show that, unless the court otherwise directs, it is only for the court; and
  - (c) with that information include an explanation of why it has been withheld from that other party.
- (4) Representations against a special measures direction must explain, as appropriate—
- (a) why the witness is not eligible for assistance;
  - (b) if the witness is eligible for assistance, why—
    - (i) no special measure would be likely to improve the quality of the witness' evidence,
    - (ii) the proposed measure or measures would not be likely to maximise, so far as practicable, the quality of the witness' evidence, or
    - (iii) the proposed measure or measures might tend to inhibit the effective testing of that evidence; and
  - (c) in a case in which the admission of video recorded evidence is proposed, why it would not be in the interests of justice for the recording, or part of it, to be admitted as evidence.
- (5) Representations against the variation or discharge of a special measures direction must explain why it should not be varied or discharged.

*[Note. Under sections 21 and 22 of the Youth Justice and Criminal Evidence Act 1999, where the witness is a child witness or a qualifying witness the special measures that the court usually must direct must be treated as likely to maximise, so far as practicable, the quality of the witness' evidence, irrespective of representations to the contrary.]*