
STATUTORY INSTRUMENTS

2022 No. 605

The Armed Forces (Service Court Rules) (Amendment) Rules 2022

Amendments to the Service Civilian Court rules

23. After rule 80 (video recorded evidence in chief) insert—

“Video recorded cross-examination or re-examination

80A.—(1) Where a special measures direction provides for a video recording to be admitted under section 28 of the 1999 Act (video recorded cross-examination or re-examination), such a recording must be made in the presence of such persons as the direction may provide and in the absence of the defendant, but in circumstances in which—

- (a) 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 persons in whose presence the recording is being made; and
- (b) the defendant is able to see and hear any such examination and to communicate with any legal representative acting for the defendant (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)(a) and (b) are to be regarded as satisfied in relation to those representatives if at all material times they are satisfied in relation to at least one of them.

(3) Where a special measures direction provides for a recording to be admitted under section 28 of the 1999 Act, the court may nevertheless subsequently direct that it is not to be so admitted if any requirement of paragraph (1), these Rules or the direction has not been complied with to the satisfaction of the court.

(4) Where in pursuance of section 28(1) of the 1999 Act a recording has been made of any examination of the witness, the witness may not be subsequently cross-examined or re-examined in respect of any evidence given by the witness in the proceedings (whether in any recording admissible under section 27 (video recorded examination in chief) or 28 of the 1999 Act or otherwise than in such a recording) unless the court gives a further special measures direction making such provision as is mentioned in section 28(1)(a) and (b) of the 1999 Act in relation to any subsequent cross-examination, and re-examination, of the witness.

(5) The court may only give such a further direction if it appears to the court—

- (a) that the proposed cross-examination is sought by a party to the proceedings as a result of that party having become aware, since the time when the original recording was made in pursuance of section 28(1) of the 1999 Act, of a matter which that party could not with reasonable diligence have ascertained by then; or
- (b) that for any other reason it is in the interests of justice to give further direction.

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(6) Nothing in this rule shall be read as applying in relation to any cross-examination of the witness by the defendant in person (in a case where the defendant is to be able to conduct any such cross-examination).”.