

## APPLICATION FOR A SPECIAL MEASURES DIRECTION

*(Criminal Procedure Rules, rule 18.3 and 18.10)*

### Case details

Name of defendant:

Court:

Case reference number:

Charge(s):

**How to use this form.** This form includes notes to help you complete it. They explain when a witness may be eligible for the assistance of special measures.

**1. Complete the box above and give the details required in the boxes below. You must complete Parts A and B in all cases, and Parts C to H as appropriate.** If you use an electronic version of this form, the boxes will expand. If you use a paper version and need more space, you may attach extra sheets.

**2. Sign and date the completed form.**

**3. Send a copy of the completed form to:**

**(a) the court, and**

**(b) each other party to the case.<sup>1</sup>**

### **Notes:**

1. You must send this form so as to reach the recipients within the time prescribed by Criminal Procedure Rule 18.3. The court may extend that time limit, **but if you are late you must explain why.**

2. A party who wants to make representations about this application must serve those representations under Criminal Procedure Rule 18.13 **not more than 14 days after service of this application.**

### **PART A: information about this application**

**A1. Do you want a hearing of this application?**

**No**       **Yes**  If yes, explain why.

**A2. Is this application late?**

**No**       **Yes**  If yes, explain why.

**A3. Have you applied for a special measures direction for this witness in this case before?**

**No**       **Yes**  If yes, give details and explain what has changed since then.

<sup>1</sup> In some circumstances, an applicant may omit information from the copy of this application that is served on another party: see Criminal Procedure Rule 18.12.

**PART B: information about the witness**

**B1. Witness' details**

Name of witness:

Date of birth:

**B2. Explain how the witness is eligible for assistance.**<sup>2</sup> Tick each relevant box. If the witness is eligible because of **disability**, or **fear or distress**, give details and explain why the quality of the witness' evidence is likely to be diminished because of that.

- |   |                          |
|---|--------------------------|
| Youth   | <input type="checkbox"/> |
| Disability  | <input type="checkbox"/> |
| Fear or distress                                  | <input type="checkbox"/> |
| Sexual offence                                    | <input type="checkbox"/> |
| Slavery or human trafficking offence <sup>3</sup> | <input type="checkbox"/> |
| Weapons offence <sup>4</sup>                      | <input type="checkbox"/> |

**B3. Explain why special measures would be likely to improve the quality of the witness' evidence.**

**B4. Which measure(s) would be likely to maximise so far as practicable the quality of the witness' evidence?** Tick each you propose.

- |   |  |
|---|--|
| Screening witness from defendant              | <input type="checkbox"/>                 |
| Evidence by live link                         | <input type="checkbox"/> complete Part C |
| Evidence in private                           | <input type="checkbox"/> complete Part D |
| Removal of wigs and gowns                     | <input type="checkbox"/>                 |
| Video recorded interview as evidence in chief | <input type="checkbox"/> complete Part E |
| Video recorded cross-examination              | <input type="checkbox"/> complete Part F |
| Intermediary                                  | <input type="checkbox"/> complete Part G |
| Aids to communication                         | <input type="checkbox"/> complete Part H |

**B5. What has been done to help the witness express an informed opinion about special measures?** Care must be taken to explain to the witness (a) what is meant by special measures, (b) what measure(s) may be available, and (c) what they would involve for the witness.<sup>5</sup>

<sup>2</sup> See the notes for guidance at the end of this form.

<sup>3</sup> The relevant offences are those contrary to section 1 or 2 of the Modern Slavery Act 2015.

<sup>4</sup> The relevant offences are those listed in Schedule 1A to the Youth Justice and Criminal Evidence Act 1999.

<sup>5</sup> If the witness does not want a special measure, he or she should be asked to explain why. The witness should also be told that if he or she changes his or her mind as the trial approaches, a further application to the court can be made.

**B6. What views has the witness expressed about:**

**(a) his or her eligibility?**

**(b) whether special measures would be likely to improve the quality of his or her evidence?**

**(c) the measure(s) that you propose?**

The views, concerns and requests expressed by the witness, or on his or her behalf, must be set out in detail.

**PART C: evidence by live link<sup>6</sup>**

**C1. Do you want the witness to give evidence:**

**using the court's own live link?**

or

**from somewhere else?**

Tick which you propose. If you want the witness to give evidence by live link from somewhere else, answer question C2.

**C2. Explain why you want the witness to give evidence from somewhere else.**

Give the address from which you propose the witness should give evidence, unless you want the court to direct that the address need not be revealed.

**C3. Who do you propose should accompany the witness while he or she gives evidence?** Give that person's name, if known, and relationship to the witness (if any).

**C4. Why would that person be an appropriate companion for the witness?**

Include the witness' own views.

<sup>6</sup> See the notes for guidance at the end of this form.

**PART D: evidence in private<sup>7</sup>**

**Explain on what grounds you want the witness to give evidence in private.**

**PART E: video recorded interview as evidence in chief<sup>8</sup>**

**E1. When was the interview?** ..... (date)

**E2. Was the interview conducted through an intermediary?<sup>9</sup>**

**No**       **Yes**  If yes, complete Part F as well.

**E3. Was any aid to communication used in conducting the interview?**

**No**       **Yes**  If yes, give details.

**E4. How long is the full version of the recording?** ..... (hours / minutes)

**E5. Has an edited version been prepared for use in evidence?**

**No**       **Yes**

**E6. When did you serve<sup>10</sup>:**

**(a) the full version?** ..... (date)

**(b) the edited version (if any)?** ..... (date)

**E7. Do you want the court's permission for the witness to give evidence in chief otherwise than by means of the recording?**

**No**       **Yes**  If yes, explain why.

<sup>7</sup> See the notes for guidance at the end of this form.

<sup>8</sup> In some cases, the court must give a direction for this measure. By completing this part, the applicant indicates that the witness will be available to be cross-examined. See also Part F and the notes for guidance at the end of this form.

<sup>9</sup> The court can give retrospective approval for the use of an intermediary in a video recorded interview. See Part G and the notes for guidance at the end of this form.

<sup>10</sup> A defendant need not serve a recording of defence evidence on the prosecution until the close of the prosecution case at trial.

**PART F: video recorded cross-examination<sup>11</sup>**

**F1. Who do you propose should be present with the witness when the cross-examination and any re-examination takes place?**

Tick each person you propose. Each member of the court and each legal representative acting in the proceedings must be able to see and hear the examination if they are not present with the witness. The defendant may not be present with the witness but must be able to see and hear the examination.

- Defence advocate
- Prosecution advocate
- Judge / justices
- Intermediary (if appointed)  see also Part G
- Witness supporter (if any)

Give the supporter's name, if known, and relationship to the witness (if any). Explain why that person would be an appropriate companion for the witness, including the witness' own views.

**F2. Describe the proposed arrangements for questioning the witness.** Ground rules for questioning may be directed by the court. If a direction for the appointment of an intermediary is sought, see also Part G.

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<sup>11</sup> See the notes for guidance at the end of this form.

**PART G: intermediary<sup>12</sup>**

**G1. Describe the witness' communication needs, and the proposed arrangements for questioning the witness.** Attach any relevant report, including an intermediary's assessment if available. Ground rules for questioning must be discussed between the court, the advocates and the intermediary before the witness gives evidence, to establish (a) how questions should be put to help the witness understand them, and (b) how the proposed intermediary will alert the court if the witness has not understood, or needs a break.

**G2. Is the proposed intermediary registered with the Ministry of Justice Intermediary Registration Board?**

No  Yes

**G3. Give the proposed intermediary's (a) name and (b) (if relevant) occupation, skills and professional qualifications.**

**G4. Is the intermediary known, or related, to the witness?**

No  Yes  If yes, give details.

**G5. Has the intermediary been used in any other part of the investigation or pre-trial preparation?**

No  Yes  If yes, give details.

**G6. Where a video recorded interview was conducted through an intermediary:**

**(a) was that intermediary the person named above? Yes  No**   
If no, attach an additional Part G in respect of that intermediary, giving the details required by questions G2, G3, G4 and G5.

**(b) did that intermediary make a declaration?<sup>13</sup> Yes  No**

<sup>12</sup> See the notes for guidance at the end of this form.

<sup>13</sup> The declaration required by Criminal Procedure Rule 18.7.



## Notes for Guidance

### Part B: information about the witness

Under section 16 of the Youth Justice and Criminal Evidence Act 1999, a witness is eligible for the assistance of a special measures direction given under section 19 of that Act if—

(a) the witness is under 17 (under 18, when the Coroners and Justice Act 2009 comes into force); or

(b) the witness has—

(i) a mental disorder, or a significant impairment of intelligence and social functioning, or

(ii) a physical disability or disorder

and the court considers that the completeness, coherence and accuracy (the 'quality') of evidence given by the witness is likely to be diminished by reason of those circumstances.

Under section 17 of the 1999 Act, a witness is eligible for such assistance if—

(a) the court is satisfied that the quality of evidence given by the witness is likely to be diminished because of his or her fear or distress in connection with giving evidence, taking account particularly of—

(i) the circumstances of the offence,

(ii) the witness' age, social and cultural background, ethnic origins, domestic and employment circumstances, religious beliefs or political opinions,

(iii) any behaviour towards the witness on the part of the defendant, the defendant's family or associates, or any other potential defendant or witness, and

(iv) the witness' own views;

(b) the witness is the complainant in respect of a sexual offence or in respect of a Modern Slavery Act 2015 offence, and has not declined such assistance; or

(c) the offence is one listed in Schedule 1A to the Youth Justice and Criminal Evidence Act 1999, and the witness has not declined such assistance.

The statutory special measures are listed in question B4. It is important for the views of the witness to be set out fully. The 1999 Act requires the court to consider any views that he or she has expressed.

### Part C: evidence by live link

'Live link' means a live television link or other arrangement by means of which, although the witness is outside the courtroom—

(a) the witness can see and hear the proceedings in the courtroom; and

(b) the judge, the magistrates and jury (as applicable), the parties' legal representatives, and any interpreter or other person appointed to assist the witness can see and hear the witness.

The witness may be in the court building or elsewhere. If elsewhere, the applicant may ask the court to direct that the address need not be revealed.

A live link direction may provide for a specified person to accompany the witness while the witness gives evidence. In deciding who that should be, the court must have regard to the witness' own views. When making the application, the applicant may not know the companion's name. In that case, give such details as are available and inform the court when the companion's name is known.

### **Part D: evidence in private**

The court can direct this measure where—

- (a) the case concerns a sexual offence; or
- (b) there are reasonable grounds for believing that someone other than the defendant has tried, or will try, to intimidate the witness.

The court can exclude from the courtroom anyone except—

- (a) the defendant;
- (b) the parties' legal representatives; and
- (c) any interpreter or other person appointed to assist the witness.

Where the court excludes press representatives, it must still allow one nominated representative to attend.

### **Part E: video recorded interview as evidence in chief**

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 special measures 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.

Under section 22A of the 1999 Act the Crown Court must, if asked, give a special measures direction for the evidence in chief of a witness who is the complainant of a sexual offence to be admitted by means of a video recording of an interview with the witness.

### **Part F: video recorded cross-examination**

Under section 28 of the Youth Justice and Criminal Evidence Act 1999, if the court gives a special measures direction for a video recording of an interview with a witness to be admitted as evidence under section 27 of the Act, the direction may also provide for any cross-examination, and any re-examination, to be video recorded and the recording admitted as evidence of that examination.

Section 28 is in force only in relation to some offences and witnesses, and only at some Crown Court centres.

### **Part G: intermediary**

Under section 29(6) of the Youth Justice and Criminal Evidence Act 1999, the court may approve the admission of a video recorded interview as evidence in chief of a witness who was interviewed through an intermediary. That intermediary must have made the declaration required by section 29(5) of the Act and Criminal Procedure Rule 18.7.

The court may give a special measures direction for the use of an intermediary at trial whether or not one took part in any interview, or in any other part of the investigation or pre-trial preparation.

Judicial College and Bar Council guidance requires that, before the witness gives evidence, the court, the advocates and the intermediary should discuss 'ground rules' for the conduct of the questioning.