STATUTORY INSTRUMENTS

2015 No. 1812

DEFENCE

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

Made - - - -	*20th October 2015*
Laid before Parliament	*23rd October 2015*
Coming into force - -	*16th November 2015*

The Secretary of State makes the following Rules in exercise of the powers conferred by sections 151, 163 and 288 of the Armed Forces Act 2006(**1**):

Citation and commencement

1. These Rules may be cited as the Armed Forces (Service Courts Rules) (Amendment) Rules 2015 and shall come into force on 16th November 2015.

Summary Appeal Court rules

2. The Armed Forces (Summary Appeal Court) Rules 2009(**2**) are amended as follows.

3. In paragraph (2) of rule 3 (interpretation: general), after the definition of "civilian police force" insert –

> ""the complainant", in relation to any offence (or alleged offence), means a person against or in relation to whom the offence was (or is alleged to have been) committed;".

4. After rule 29 (interpreters) insert—

> "**Interpretation, translation for persons other than the appellant**
>
> **29A.**—(1) Where the complainant is due to attend a hearing as a witness, the court administration officer, where satisfied that the person needs interpretation, shall appoint an interpreter to act at the hearing.
>
> (2) The court administration officer may also appoint an interpreter for any other witness who is required to give evidence at a hearing, other than an appellant.

(**1**) 2006 c. 52.
(**2**) S.I. 2009/1211, amended by S.I. 2013/2527.

(3) Before an interpreter begins to act at a hearing, an oath shall be administered to the interpreter.

(4) Before an interpreter is sworn, the interpreter's name shall be read out, and any party to the proceedings may object to the interpreter on any reasonable ground.

(5) If the judge advocate upholds any such objection, the interpreter shall not be sworn, and the court administration officer shall appoint another interpreter.

(6) On application or on his own initiative, the judge advocate may require a written translation of any document or part of a document to be provided for a complainant or other person who attends a hearing as a witness (other than an appellant) and who needs interpretation.

(7) In its application by virtue of paragraph (6), nothing in this rule is limited by anything in Chapter 7 of Part 11 (special measures directions).".

5. In rule 30(2) (matters to be included in record of proceedings)—

(a) at the end of rule 30(2)(h) delete "and";

(b) in rule 30(2)(i), delete the full stop and insert "; and";

(c) after rule 30(2)(i), insert—

"(j) a record of any decision on an application under rule 29A(6).".

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 sub-paragraph (d).