STATUTORY RULES OF NORTHERN IRELAND

2003 No. 295

COUNTY COURTS

County Court (Amendment No. 2) Rules (Northern Ireland) 2003

Made - - - -	*8th June 2003*
Coming into operation	*30th June 2003*

We, the County Court Rules Committee, appointed by the Lord Chancellor under Article 46 of the County Courts (Northern Ireland) Order 1980(**1**), in exercise of the powers conferred on us by Article 47 of that Order and Articles 8(6) and 39(1) of the Criminal Evidence (Northern Ireland) Order 1999(**2**), and of all other powers enabling us in that behalf, hereby make the following Rules: –

Citation and interpretation

1.—(1) These Rules may be cited as the County Court (Amendment No. 2) Rules (Northern Ireland) 2003.

(2) In these Rules, a reference to an Order, Part, Appendix or Form is a reference to that Order, Part, Appendix or Form as numbered in the County Court Rules (Northern Ireland) 1981(**3**).

Amendment to the principal Rules

2.—(1) In Order 32 Part IIA, for Rules 6B and 6C, there shall be substituted the following new Rules: –

"**Application for special measures direction**

6B.—(1) Any party to an appeal arising out of criminal proceedings in a magistrates' court may apply for a special measures direction under Article 7 of the 1999 Order by giving notice in Form 137A.

(2) If the application is for a special measures direction –

(a) enabling a witness to give evidence by means of a live link, the information sought in Part 2 of Form 137A shall be provided;

(**1**) S.I. 1980/397 (N.I. 3)
(**2**) S.I. 1999/2789 (N.I. 8)
(**3**) S.R. 1981 No. 225; to which the most recent relevant amendment was made by S.R. 1996 No. 294 and S.R. 2003 No. 272

(b) enabling a video recording of an interview of a witness to be admitted as evidence in chief of the witness, the information sought in Part 3 of Form 137A shall be provided.

(3) An application under paragraph (1) shall be made within 14 days from the date of the service of notice of appeal from a decision of a magistrates' court.

(4) The notice under paragraph (1) shall be served on the chief clerk of the appropriate county court division, and at the same time a copy thereof shall be served by the applicant on every other party to the appeal.

(5) Any party on whom a copy of a notice under paragraph (1) is served may oppose the application for a special measures direction in respect of any measure available in relation to the witness, whether or not the question whether the witness is eligible for assistance by virtue of Article 4(1)(a) of the 1999 Order is in issue.

(6) Any party who wishes to oppose the application shall, within 7 days of the date the notice was served on him, notify the applicant and the chief clerk, in writing, of his opposition and give reasons for it.

(7) In order to comply with paragraph (6) –

(a) a party shall state in the written notification whether he –

(i) disputes that the witness is eligible for assistance by virtue of Article 4(1)(a) of the 1999 Order; and

(ii) opposes the granting of a special measures direction; and

(b) where the application relates to the admission of a video recording, a party who receives a recording shall provide the information required by Rule 6H(5).

(8) Except where notice is received in accordance with paragraph (6), the court may –

(a) determine the application in favour of the applicant without a hearing; or

(b) direct a hearing.

(9) Where a party to the appeal notifies the chief clerk in accordance with paragraph (6) of his opposition to the application, the court shall direct a hearing of the application.

(10) Where a hearing of the application is to take place in accordance with paragraph (8) or (9), the chief clerk shall notify each party to the appeal of the time and place of the hearing.

(11) A party notified in accordance with paragraph (10) may be present at the hearing and be heard.

(12) The chief clerk shall, as soon as reasonably practicable, notify all the parties of the decision in Form 137B, and if the application was made for a direction enabling a video recording of an interview of a witness to be admitted as evidence in chief of that witness, the notification must state whether the whole or specified parts only of the video recording or recordings disclosed are to be admitted in evidence.

Application for an extension of time

6C.—(1) Without prejudice to the generality of Order 43 Rule 10, an application may be made in writing for the period of 14 days specified in Rule 6B(3) to be extended.

(2) The application may be made either before or after that period has expired.

(3) The application shall be accompanied by a statement setting out the reasons why the applicant is or was unable to make the application within that period, and the application and the statement shall be served by the applicant on the chief clerk and on every other party to the appeal.

(4) An application for an extension of time under this Rule shall be determined by a Judge without a hearing unless the Judge otherwise directs.

(5) The chief clerk shall notify all the parties of the Judge's decision."

(2) In Order 32 Part IIA, after Rule 6C there shall be added the following new Rules:

"**Late applications**

6D.—(1) Notwithstanding the requirements of Rule 6B –

(a) an application for a special measures direction may be made orally at the hearing of the appeal; or

(b) the court may of its own motion raise the issue whether a special measures direction should be given.

(2) Where an application is made in accordance with paragraph (1)(a) –

(a) the applicant must state the reasons for the late application; and

(b) the court must be satisfied that the applicant was unable to make the application in accordance with Rule 6B.

(3) The court shall determine, before making a special measures direction –

(a) whether to allow other parties to the appeal to make representations on the question;

(b) the time allowed for making such representations (if any); and

(c) whether the question should be determined following a hearing at which the parties to the appeal may be heard.

Discharge or variation of a special measures direction

6E.—(1) An application to discharge or vary a special measures direction under Article 8(2) of the 1999 Order shall be in writing and shall specify each material change of circumstances which the applicant alleges has occurred since the direction was made.

(2) An application under paragraph (1) shall be served, by the applicant, on the chief clerk and on each party to the appeal as soon as reasonably practicable after the change of circumstances occurs.

(3) Any party on whom the application is served in accordance with paragraph (2) may oppose the application on the ground that it discloses no material change of circumstances.

(4) Paragraphs (6) to (12) of Rule 6B shall apply to an application to discharge or vary a special measures direction as they apply to an application for a direction.

Renewal application following a material change of circumstances

6F.—(1) Where an application for a special measures direction has been refused by the court, the application may only be renewed ("renewal application") where there has been a material change of circumstances since the court refused the application.

(2) The applicant shall–

(a) specify in the renewal application each material change of circumstances which is alleged to have occurred; and

(b) serve the renewal application on the chief clerk, and on each party to the appeal, as soon as reasonably practicable after the change occurs.

(3) Any party on whom the application is served in accordance with paragraph (2)(b) may oppose the application on the ground that it discloses no material change of circumstances.

(4) Paragraphs (6) to (12) of Rule 6B, Rules 6G and 6H apply to a renewal application as they apply to the application which was refused.

Application for special measures direction for witness to give evidence by means of a live link

6G.—(1) Where the application for a special measures direction is made in accordance with Rule 6B(2)(a), for a witness to give evidence by means of a live link, the following provisions of this Rule shall also apply.

(2) Subject to paragraph (3), a party who seeks to oppose an application for a witness to give evidence by means of a live link must, in order to comply with Rule 6B(6), state why in his view the giving of a special measures direction would not be likely to maximise the quality of the witness's evidence.

(3) Paragraph (2) does not apply in relation to a witness in need of special protection within the meaning of Article 9(1)(b) of the 1999 Order.

(4) Where a special measures direction is made enabling a witness to give evidence by means of a live link, that witness shall be accompanied at the live link only by persons acceptable to a Judge.

Video recording of testimony from witnesses

6H.—(1) Where an application is made for a special measures direction enabling a video recording of an interview of a witness to be admitted as evidence in chief of the witness, the following provisions of this Rule shall also apply.

(2) Notice of the application made in accordance with Rule 6B(1) shall be accompanied by the video recording (or a copy of the video recording) which it is proposed to tender in evidence and shall include –

(a) the name of the appellant and the offence charged;

(b) the name and date of birth of the witness in respect of whom the application is made;

(c) the date on which the video recording was made;

(d) a statement as to whether, and if so at what point in the video recording, an oath was administered to, or a solemn declaration made by, the witness;

(e) a statement that, in the opinion of the applicant, either –

(i) the witness is available for cross-examination; or

(ii) the witness is not available for cross-examination and the parties have agreed that there is no need for the witness to be so available;

(f) a statement of the circumstances in which the video recording was made which complies with paragraph (4); and

(g) the date on which the video recording was disclosed to the other party or parties.

(3) Where it is proposed to tender part only of a video recording of an interview with the witness, the application must specify that part and be accompanied by a video recording of the entire interview, including those parts which it is not proposed to tender in evidence, and by a statement of the circumstances in which the video recording of the entire interview was made which complies with paragraph (4).

(4) The statement of the circumstances in which the video recording was made referred to in paragraphs (2)(f) and (3) shall include the following information, except in so far as it is contained in the recording itself: –

(a) the times at which the recording commenced and finished, including details of interruptions;

(b) the location at which the recording was made and the usual function of the premises;

(c) in relation to each person present at any point during, or immediately before, the recording –

(i) their name, age and occupation;

(ii) the time for which each person was present; and

(iii) the relationship, if any, of each person to the witness and to the appellant;

(d) in relation to the equipment used for the recording–

(i) a description of the equipment;

(ii) the number of cameras used;

(iii) whether the cameras were fixed or mobile;

(iv) the number and location of the microphones;

(v) the video format used; and

(vi) whether it offered single or multiple recording facilities and, if so, which were used; and

(e) the location of the mastertape if the video recording is a copy and details of when and by whom the copy was made.

(5) A party who receives a copy of a recording under paragraph (2) shall within 7 days of date on which it was served on him, notify the applicant and the chief clerk, in writing –

(a) whether he objects to the admission under Article 15 of the 1999 Order of any part of the video recording or recordings disclosed, giving his reasons why it would not be in the interests of justice for the recording or any part of it to be admitted;

(b) whether he would agree to the admission of part of the video recording or recordings and if so, which part or parts; and

(c) whether he wishes to be represented at any hearing of the application.

(6) Notwithstanding the provisions of Rule 6B and this Rule, a copy of any video recording which the appellant proposes to tender in evidence need not be sent to the prosecution until the close of the prosecution case at the hearing of the appeal.

(7) The court may determine an application by the appellant to tender in evidence a video recording even though a copy of the recording has not, in accordance with paragraph (6), been served upon the prosecutor.

(8) Where a copy of a video recording which is the subject of a special measures direction is sent to the prosecutor after the direction has been made, the prosecutor may apply to the court for the direction to be varied or discharged.

(9) An application under paragraph (8) may be made orally to the court.

(10) A prosecutor who makes an application under paragraph (8) shall state –

(a) why he objects to the admission under Article 15 of the 1999 Order of any part of the video recording or recordings disclosed, giving his reasons why it would not be in the interests of justice for the recording or any part of it to be admitted; and

(b) whether he would agree to the admission of part of the video recording or recordings and if so, which part or parts.

(11) The court shall, before determining the application: –

(a) direct a hearing of the application; and

(b) allow all the parties to the appeal to be present and be heard on the application.

(12) The chief clerk shall notify all parties to the appeal of the decision of the court as soon as reasonably practicable after the decision is given.