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STATUTORY INSTRUMENTS

2006 No. 2889

DEFENCE

The Courts-Martial (Royal Navy, Army and Royal Air Force) (Evidence) Rules 2006

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SCHEDULE 1 — FORM OF APPLICATION FOR A SPECIAL MEASURES DIRECTION UNDER SECTION 19 OF THE YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999

SCHEDULE 2

FORM A — Rule 16(1) - Form of application for a reporting direction under section 46 of the Youth Justice and Criminal Evidence Act 1999

FORM B — Rule 19(4) - Form of application for an excepting direction under section 46(9) of the Youth Justice and Criminal Evidence Act 1999

The Secretary of State, in exercise of the powers conferred upon him by section 103 of the Army Act 1955(**a**), section 103 of the Air Force Act 1955(**b**), section 58 of the Naval Discipline Act 1957(**c**), and sections 20(6), 37(5), 38(6), 43(3) and 65(1) of the Youth Justice and Criminal Evidence Act 1999(**d**), makes the following Rules:

(**a**) 1955 c. 18.
(**b**) 1955 c. 19.
(**c**) 1957 c. 53.
(**d**) 1999 c. 23; Chapters 1 to 5 of Part 2, and sections 62, 63 and 65, apply to proceedings before courts-martial subject to the modifications specified in the Youth Justice and Criminal Evidence Act 1999 (Application to Courts-Martial) Order 2006 (S.I. 2006/2886).

PART 1

General

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Courts-Martial (Royal Navy, Army and Royal Air Force) (Evidence) Rules 2006 and shall come into force on 6th December 2006.

(2) These Rules apply to any proceedings before a court-martial constituted under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957.

(3) In these Rules—

"the Act" means the Youth Justice and Criminal Evidence Act 1999;

"an intermediary" has the same meaning as in section 29 of the Act;

"child witness in need of special protection" shall be construed in accordance with section 21(1) of the Act;

"court administration officer" means a person appointed under section 84A of the Army Act 1955 or the Air Force Act 1955, or under s 53A of the Naval Discipline Act 1957;

"special measures direction" means a direction under section 19 of the Act.

PART 2

Special measures directions

Application for special measures direction

2.—(1) An application by a party in any proceedings for the judge advocate to give a special measures direction under section 19 of the Act must be made in writing in the form set out in Schedule 1 to these Rules or a form to the like effect.

(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 B of that form must be provided;

(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 C of that form must be provided; or

(c) providing for any examination of a witness to be conducted through an intermediary, the information sought in Part D of that form must be provided.

(3) The application under paragraph (1) must be sent to the court administration officer and at the same time a copy thereof must be sent by the applicant to every other party to the proceedings.

(4) The application must be received by the court administration officer within 28 days of—

(a) the date appointed for trial; or

(b) the lodging of a notice of appeal under paragraph 18(3) of Schedule 3 to the Armed Forces Act 1976(**a**).

(5) A party to whom an application is sent in accordance with paragraph (3) may oppose the application for a special measures direction in respect of any, or any particular, measure available in relation to the witness, whether or not the question whether the witness is eligible for assistance by virtue of section 16 or 17 of the Act is in issue.

(6) A party who wishes to oppose the application must, within 14 days of the date the application was served on him, notify the applicant and the court administration officer in writing of his opposition and give reasons for it.

(**a**) 1976 c. 52.

(7) Paragraphs (5) and (6) do not apply in respect of an application for a special measures direction enabling a child witness in need of special protection to give evidence by means of a live link if the opposition is that the special measures direction is not likely to maximise the quality of the witness's evidence.

(8) In order to comply with paragraph (6)—

(a) a party must in the written notification state whether he—

(i) disputes that the witness is eligible for assistance by virtue of section 16 or 17 of the Act;

(ii) disputes that any of the special measures available would be likely to improve the quality of evidence given by the witness or that such measures (or a combination of them) would be likely to maximise the quality of that evidence; and

(iii) 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 must provide the information required by rule 8(7).

(9) Except where notice is received in accordance with paragraph (6), the judge advocate may—

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

(b) direct a hearing.

(10) Where a party to the proceedings notifies the court administration officer in accordance with paragraph (6) of his opposition to the application, the judge advocate must direct a hearing of the application.

(11) Where a hearing of the application is to take place in accordance with paragraph (9) or (10), the court administration officer shall notify each party to the proceedings of the time and place of the hearing.

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

(13) The court administration officer must, within 3 days of the decision of the judge advocate in relation to an application under paragraph (1) being made, notify all the parties of the decision, 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

3.—(1) An application may be made in writing for the period of 28 days specified in rule 2(4) to be extended.

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

(3) The application must be accompanied by a statement setting out the reasons why the applicant is or was unable to make the application within that period and a copy of the application and the statement must be sent to every other party to the proceedings.

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

(5) The court administration officer shall notify all the parties of the judge advocate's decision.

Late applications

4.—(1) Notwithstanding the requirements of rule 2—

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

(b) the judge advocate may of his 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 judge advocate must be satisfied that the applicant was unable to make the application in accordance with rule 2.

(3) The judge advocate shall determine before making a special measures direction—

(a) whether to allow other parties to the proceedings 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 proceedings may be heard.

(4) Paragraphs (2) and (3) do not apply in respect of an application made orally at the trial for a special measures direction—

(a) enabling a child witness in need of special protection to give evidence by means of a live link; or

(b) enabling a video recording of such a child to be admitted as evidence in chief of the witness,

if the opposition is that the special measures direction will not maximise the quality of the witness's evidence.

Discharge or variation of a special measures direction

5.—(1) An application to the judge advocate to discharge or vary a special measures direction under section 20(2) of the Act must be in writing and each material change of circumstances which the applicant alleges has occurred since the direction was made must be set out.

(2) An application under paragraph (1) must be sent to the court administration officer as soon as reasonably practicable after the change of circumstances occurs.

(3) The applicant must also send copies of the application to each party to the proceedings at the same time as the application is sent to the court administration officer.

(4) A party to whom an application is sent in accordance with paragraph (3) may oppose the application on the ground that it discloses no material change of circumstances.

(5) Rule 2(6) to (13) shall apply to an application to discharge or vary a special measures direction as it applies to an application for a direction.

Renewal application following a material change of circumstances

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

(2) The applicant must—

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

(b) send the renewal application to the court administration officer as soon as reasonably practicable after the change occurs.

(3) The applicant must also send copies of the renewal application to each of the parties to the proceedings at the same time as the application is sent to the court administration officer.

(4) A party to whom the renewal application is sent in accordance with paragraph (3) may oppose the application on the ground that it discloses no material change of circumstances.

(5) Rule 2(6) to (13) and rules 7 and 8 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 television link

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

(2) A party who seeks to oppose an application for a child witness to give evidence by means of a live link must, in order to comply with rule 2(5), 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) However, paragraph (2) does not apply in relation to a child witness in need of special protection.

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

(5) If the special measures directions combine provisions for a witness to give evidence by means of a live link with provision for examination of the witness to be conducted through an intermediary, the witness shall be accompanied at the live link only by—

(a) the intermediary; and

(b) such other persons as may be acceptable to the judge advocate.

Video recording of testimony from witnesses

8.—(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) The application made in accordance with rule 2(1) must be accompanied by the video recording which it is proposed to tender in evidence and must include—

(a) the name of the accused and the offence to be 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) of this rule; 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) of this rule.

(4) The statement of the circumstances in which the video recording was made referred to in paragraphs (2)(f) and (3) of this rule 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 accused;

(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) If the special measures direction enables a video recording of an interview of a witness to be admitted as evidence in chief of the witness with provision for the examination of the witness to be conducted through an intermediary, the information to be provided under paragraph (4)(c) shall be the same as that for other persons present at the recording but with the addition of details of the declaration made by the intermediary under rule 10.

(6) If the special measures direction enables a video recording of an interview of a witness to be admitted as evidence in chief of the witness with provision for the witness, in accordance with section 30 of the Act, to be provided with a device as an aid to communication during the video recording of the interview the information to be included under paragraph (4)(d) shall include also details of any such device used for the purposes of the recording.

(7) A party who receives a recording under paragraph (2) must within 14 days of its receipt, notify the applicant and the court administration officer, in writing—

(a) whether he objects to the admission under section 27 of the Act 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.

(8) A party who seeks to oppose an application for a special measures direction enabling a video recording of an interview of a child witness to be admitted as evidence in chief of the witness must, in order to comply with rule 2(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.

(9) However, paragraph (8) does not apply if the witness is a child witness in need of special protection.

(10) Notwithstanding the provisions of rule 2 and this rule, any video recording which the accused proposes to tender in evidence need not be sent to the prosecution until the close of the prosecution case at the trial.

(11) The judge advocate may determine an application by the accused to tender in evidence a video recording even though the recording has not, in accordance with paragraph (10), been served upon the prosecution.

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

(13) An application under paragraph (12) may be made orally to the judge advocate.

(14) A prosecutor who makes an application under paragraph (12) must state—

(a) why he objects to the admission under section 27 of the Act 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.

(15) The judge advocate must, before determining the application—

(a) direct a hearing of the application; and

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

(16) The court administration officer must notify all parties to the proceedings of the decision of the judge advocate as soon as may be reasonable after the decision is given.

(17) Any decision varying a special measures direction must state whether the whole or specified parts of the video recording or recordings subject to the application are to be admitted in evidence.

Expert evidence in connection with special measures directions

9. Any party to the proceedings who proposes to adduce expert evidence (whether of fact or opinion) in connection with an application or renewal application for, or for varying or discharging, a special measures direction must, not less than 14 days before the date set for the trial to begin—

(a) furnish the other party or parties to those proceedings with a statement in writing of any finding or opinion which he proposes to adduce by way of such evidence; and

(b) where a request is made to him in that behalf by any other party to those proceedings, provide that party also with a copy of (or if it appears to the party proposing to adduce the evidence to be more practicable, a reasonable opportunity to examine) the record of any observation, test, calculation or other procedure on which such finding or opinion is based and any document or other thing or substance in respect of which any such procedure has been carried out.

Intermediaries

10. The declaration required to be made by an intermediary in accordance with section 29(5) of the Act shall be in the following form:

> "I solemnly, sincerely and truly declare that I will well and faithfully communicate 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."

PART 3

Restriction on cross-examination by an accused acting in person

Restrictions on cross-examination of witness

11.—(1) This rule and rules 12 and 13 apply where an accused is prevented from cross-examining a witness in person by virtue of section 34, 35 or 36 of the Act.

(2) The judge advocate shall explain to the accused as early in the proceedings as is reasonably practicable that he—

(a) is prevented from cross-examining a witness in person; and

(b) should arrange for a legal representative to act for him for the purpose of cross-examining the witness.

(3) The accused shall notify the court administration officer within 7 days of the judge advocate giving his explanation, or within such other period as the judge advocate may in any particular case allow, of the action, if any, he has taken.

(4) Where he has arranged for a legal representative to act for him, the notification shall include details of the name and address of the representative.

(5) The notification shall be in writing.

(6) The court administration officer shall notify all other parties to the proceedings of the name and address of the person, if any, appointed to act for the accused.

(7) Where the judge advocate gives his explanation under paragraph (2) to the accused either within 7 days of the day set for the commencement of any hearing at which a witness in respect of whom a prohibition under section 34, 35 or 36 of the Act applies may be cross-examined or after such a hearing has commenced, the period of 7 days shall be reduced in accordance with any directions issued by the judge advocate.

(8) Where at the end of the period of 7 days or such other period as the judge advocate has allowed, the court administration officer has received no notification from the accused, the judge advocate may grant the accused an extension of time, whether on his own motion or on the application of the accused.

(9) Before granting an extension of time, the judge advocate may hold a hearing at which all parties to the proceedings may attend and be heard.

(10) Any extension of time shall be of such period as the judge advocate considers appropriate in the circumstances of the case.

(11) The decision of the judge advocate as to whether to grant the accused an extension of time shall be notified to all parties to the proceedings by the court administration officer.

Appointment of legal representative by the judge advocate

12.—(1) Where the judge advocate decides, in accordance with section 38(4) of the Act, to appoint a legal representative, the court administration officer shall notify all parties to the proceedings of the name and address of the representative.

(2) An appointment made by the judge advocate under section 38(4) of the Act shall, except to such extent as the judge advocate may in any particular case determine, terminate at the conclusion of the cross-examination of the witness or witnesses in respect of whom a prohibition under section 34, 35 or 36 of the Act applies.

Appointment arranged by the accused

13.—(1) The accused may arrange for the legal representative, appointed by the judge advocate under section 38(4) of the Act, to be appointed to act for him for the purpose of cross-examining any witness in respect of whom a prohibition under section 34, 35 or 36 of the Act applies.

(2) Where such an appointment is made—

(a) both the accused and the legal representative appointed shall notify the court of the appointment; and

(b) the legal representative shall, from the time of his appointment, act for the accused as though the arrangement had been made under section 38(2)(a) of the Act and shall cease to be the representative of the court under section 38(4) of the Act.

(3) Where the court receives notification of the appointment either from the legal representative or from the accused but not from both, the judge advocate shall investigate whether the appointment has been made, and if he concludes that the appointment has not been made, paragraph (2)(b) shall not apply.

(4) An accused may, notwithstanding an appointment by the judge advocate under section 38(4) of the Act, arrange for a legal representative to act for him for the purpose of cross-examining any witness in respect of whom a prohibition under section 34, 35 or 36 of the Act applies.

(5) Where the accused arranges for, or informs the court of his intention to arrange for, a legal representative to act for him, he shall notify the court, within such period as the judge advocate may allow, of the name and address of any person appointed to act for him.

(6) Where the court is notified within the time allowed that such an appointment has been made, any legal representative appointed by the judge advocate in accordance with section 38(4) of the Act shall be discharged.

(7) The court administration officer shall, as soon as reasonably practicable after the court receives notification of an appointment under this rule or, where paragraph (3) applies, after the judge advocate is satisfied that the appointment has been made, notify all the parties to the proceedings—

(a) that the appointment has been made;

(b) where paragraph (4) applies, of the name and address of the person appointed; and

(c) that the person appointed by the judge advocate under section 38(4) of the Act has been discharged or has ceased to act for the court.

Prohibition on cross-examination of particular witness

14.—(1) An application by the prosecutor for the judge advocate to give a direction under section 36 of the Act in relation to any witness must be sent to the court administration officer and at the same time a copy thereof must be sent by the applicant to every other party to the proceedings.

(2) In his application the prosecutor must state why, in his opinion—

(a) the evidence given by the witness is likely to be diminished if cross-examination is undertaken by the accused in person;

(b) the evidence would be improved if a direction were given under section 36(2) of the Act; and

(c) it would not be contrary to the interests of justice to give such a direction.

(3) On receipt of the application the court administration officer must refer it to the judge advocate.

(4) Where a copy of the application is received by a party to the proceedings more than 14 days before the date set for the trial to begin, that party may make observations in writing on the application to the court administration officer, but any such observations must be made within 14 days of the receipt of the application and be copied to the other parties to the proceedings.

(5) A party to whom an application is sent in accordance with paragraph (1) who wishes to oppose the application must give his reasons for doing so to the court administration officer and the other parties to the proceedings.

(6) Those reasons must be notified—

(a) within 14 days of the date the application was served on him, if that date is more than 14 days before the date set for the trial to begin;

(b) if the trial has begun, in accordance with any directions issued by the judge advocate; or

(c) if neither sub-paragraph (a) nor sub-paragraph (b) apply, before the date set for the trial to begin.

(7) Where the application made in accordance with paragraph (1) is made before the date set for the trial to begin and—

(a) is not contested by any party to the proceedings, the judge advocate may determine the application without a hearing;

(b) is contested by a party to the proceedings, the judge advocate must direct a hearing of the application.

(8) Where the application is made after the trial has begun—

(a) the application may be made orally; and

(b) the judge advocate may give such directions as he considers appropriate to deal with the application.

(9) Where a hearing of the application is to take place, the court administration officer shall notify each party to the proceedings of the time and place of the hearing.

(10) A party notified in accordance with paragraph (9) may be present at the hearing and be heard.

(11) The court administration officer must, as soon as possible after the determination of an application made in accordance with paragraph (1), give notice of the decision and the reasons for it to all the parties to the proceedings.

(12) A person making an oral application under paragraph (8)(a) must—

(a) give reasons why the application was not made before the trial commenced; and

(b) provide the judge advocate with the information set out in paragraph (2).

PART 4

Evidence of a complainant's previous sexual behaviour

Evidence of a complainant's previous sexual behaviour

15.—(1) An application for leave under section 41(2) of the Act must be made in writing to the court administration officer and must either—

(a) be received by that officer within 28 days of—

(i) that officer issuing a convening order under section 84C(1) of the Army Act 1955 or of the Air Force Act 1955, or under section 53C(1) of the Naval Discipline Act 1957, or

(ii) the lodging of a notice of appeal under paragraph 18(3) of Schedule 3 to the Armed Forces Act 1976,

or within such period as the judge advocate may in any particular case determine; or

(b) be accompanied by a full written explanation specifying the reasons why the application could not have been made within the 28 days mentioned above.

(2) Such an application must contain the following—

(a) a summary of the evidence it is proposed to adduce and of the questions it is proposed to put to any witness;

(b) a full explanation of the reasons why it is considered that the evidence and questions fall within section 41(3) or (5) of the Act;

(c) a summary of any document or other evidence to be submitted in support of such evidence and questions; and

(d) where it is proposed that a witness at the trial give evidence as to the complainant's sexual behaviour, the name and date of birth of any such witness.

(3) A copy of the application must be sent to all the parties to the proceedings at the same time as it is sent to the court administration officer.

(4) Where a copy of the application is received by the prosecutor more than 14 days before the date set for the trial to begin, the prosecutor must, within 14 days of the receipt of the application, notify the other parties to the proceedings and the court administration officer in writing whether or not—

(a) he opposes the application, giving reasons for any such opposition; and

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

(5) Where a copy of the application is received by a party to the proceedings other than the prosecutor more than 14 days before the date set for the trial to begin, that party may make

observations in writing on the application to the court administration officer, but any such observations must be made within 14 days of the receipt of the application and be copied to the other parties to the proceedings.

(6) In considering any application under this rule, the judge advocate may request a party to the proceedings to provide him with such information as he may specify and which he considers would assist him in determining the application.

(7) Where the judge advocate makes such a request, the person required to provide the information must do so within 14 days of the judge advocate making the request or by such time as the judge advocate considers appropriate in the circumstances of the case.

(8) An application under paragraph (1) must be determined by the judge advocate following a hearing if—

(a) the prosecutor has notified the court administration officer that he opposes the application; or

(b) the copy of the application was received by any of the parties to the proceedings less than 14 days before the date set for the trial to begin.

(9) An application under paragraph (1) must be determined by the judge advocate following a hearing in any case where he considers such a hearing is appropriate in the circumstances of the particular case.

(10) The date and time of the hearing must be—

(a) determined by the judge advocate or the court administration officer after taking into consideration—

(i) any time which a party to the proceedings has been given to respond to a request for information; and

(ii) the date fixed for any other hearing relevant to the proceedings; and

(b) notified by the court administration officer to all the parties to the proceedings.

(11) Except where paragraph (8) or (9) applies, an application under paragraph (1) must be determined by the judge advocate without a hearing.

(12) The court administration officer must, as soon as possible after the determination of an application made in accordance with paragraph (1), give notice of the decision and the reasons for it to all the parties to the proceedings.

(13) An application under section 41(2) of the Act may be made orally where the application is made after the trial has begun.

(14) The person making the application under paragraph (13) must—

(a) give reasons why the applicant failed to make the application in writing in accordance with paragraph (1); and

(b) provide the judge advocate with the information set out in paragraph (2)(a) to (d).

PART 5

Restrictions on reporting

Application for a reporting direction under section 46(6) of the Act

16.—(1) An application for a reporting direction made by a party to any proceedings, in relation to a witness in those proceedings, must be made in writing in Form A of Schedule 2 to these Rules (or a form to the like effect) or orally under rule 18.

(2) If an application for a reporting direction is made in writing, the applicant shall send that application to the court administration officer and copies shall be sent at the same time to every other party to those proceedings.

Opposing an application for a reporting direction

17.—(1) If an application for a reporting direction is made in writing, any party to the proceedings who wishes to oppose that application must notify the applicant and the court administration officer in writing of his opposition and give reasons for it.

(2) A person opposing an application must state in the written notification whether he disputes that the—

(a) witness is eligible for protection under section 46 of the Act; or

(b) granting of protection would be likely to improve the quality of the evidence given by the witness or the level of co-operation given by the witness to any party to the proceedings in connection with that party's preparation of its case.

(3) The notification under paragraph (1) must be given within 5 working days of the date the application was served on him unless an extension of time is granted under rule 21.

Urgent action on an application under section 46(6) of the Act

18.—(1) The judge advocate may give a reporting direction under section 46 of the Act in relation to a witness in those proceedings, notwithstanding that the 5 working days specified in rule 17(3) have not expired if—

(a) an application is made to him for the purposes of this rule; and

(b) he is satisfied that, due to exceptional circumstances, it is appropriate to do so.

(2) Any party to the proceedings may make the application under paragraph (1) whether or not an application has already been made under rule 16.

(3) An application under paragraph (1) may be made orally or in writing.

(4) If an application is made orally, the judge advocate may hear and take into account representations made to him by any person who in his view has a legitimate interest in the application before it.

(5) The application must specify the exceptional circumstances on which the application relies.

Application for an excepting direction under section 46(9) of the Act

19.—(1) An application for an excepting direction under section 46(9) of the Act (a direction dispensing with restrictions imposed by a reporting direction) may be made by—

(a) a party to those proceedings; or

(b) any person who, although not a party to the proceedings, is directly affected by a reporting restriction given in relation to a witness in those proceedings.

(2) If an application for an excepting direction is made, the applicant must state why—

(a) the effect of a reporting direction imposed places a substantial and unreasonable restriction on the reporting of the proceedings; and

(b) it is in the public interest to remove or relax those restrictions.

(3) An application for an excepting direction may be made in writing, pursuant to paragraph (4), at any time after the commencement of the proceedings in the court or orally at a hearing of an application for a reporting direction.

(4) If the application for an excepting direction is made in writing it must be in Form B of Schedule 2 to these Rules (or a form to the like effect) and the applicant shall send that application to the court administration officer and copies shall be sent at the same time to every party to those proceedings.

(5) Any person served with a copy of an application for an excepting direction who wishes to oppose it, must notify the applicant and court administration officer in writing of his opposition and give reasons for it.

(6) The notification under paragraph (5) must be given within 5 working days of the date the application was served on him unless an extension of time is granted under rule 21.

Variation or revocation of a reporting or excepting direction

20.—(1) An application to—

(a) revoke a reporting direction; or

(b) vary or revoke an excepting direction,

may be made at any time after the commencement of the proceedings in the court.

(2) An application under paragraph (1) may be made by a party to the proceedings in which the direction was issued, or by a person who, although not a party to those proceedings, is in the opinion of the judge advocate directly affected by the direction.

(3) An application under paragraph (1) must be made in writing and the applicant shall send that application to the court administration officer, and at the same time copies of the application shall be sent to every party or, as the case may be, every party to the proceedings.

(4) The applicant must set out in his application the reasons why he seeks to have the direction varied or, as the case may be, revoked.

(5) Any person served with a copy of an application who wishes to oppose it, must notify the applicant and the court administration officer in writing of his opposition and give reasons for it.

(6) Any notification under paragraph (5) must be given within 5 working days of the date the application was served on him unless an extension of time is granted under rule 21.

Application for an extension of time

21.—(1) An application may be made in writing to extend the period of time for notification under rule 17(3), rule 19(6) or rule 20(6) before that period has expired.

(2) An application must be accompanied by a statement setting out the reasons why the applicant is unable to give notification within that period.

(3) An application must be sent to the court administration officer and a copy of the application must be sent at the same time to the applicant.

Decision of the judge advocate

22.—(1) The judge advocate may—

(a) determine any application made under rule 16 and rules 18 to 21 without a hearing; or

(b) direct a hearing of any application.

(2) The court administration officer shall notify all the parties of the judge advocate's decision as soon as reasonably practicable.

(3) If a hearing of an application is to take place, the court administration officer shall notify each party to the proceedings of the time and place of the hearing.

(4) A judge advocate may hear and take into account representations made to him by any person who in the judge advocate's view has a legitimate interest in the application before it.

PART 6

Revocations and amendments

Revocations and amendments to the Courts-Martial (Army) Rules 1997 and the Courts-Martial (Royal Air Force) Rules 1997

23.—(1) The Courts-Martial (Army) Rules 1997(**a**) and the Courts-Martial (Royal Air Force) Rules 1997(**b**) are amended as follows.

(2) Rule 61 is revoked.

(3) In Schedule 2, Form 7 (form of notice of application for leave to tender in evidence a video recording) shall be omitted.

(4) In Schedule 4, for paragraph 14, substitute—

> "(14) any application for a special measures direction under section 19 of the Youth Justice and Criminal Evidence Act 1999;".

Revocations and amendments to the Courts-Martial (Royal Navy) Rules 1997

24.—(1) The Courts-Martial (Royal Navy) Rules 1997(**c**) are amended as follows.

(2) Rule 52 is revoked.

(3) In Schedule 2, Form 7 (form of notice of application for leave to tender in evidence a video recording) shall be omitted.

(4) In Schedule 3, for paragraph (o), substitute—

> "(o) any application for a special measures direction under section 19 of the Youth Justice and Criminal Evidence Act 1999;".

Derek Twigg
Parliamentary Under Secretary of State
Ministry of Defence

30th October 2006

(**a**) S.I. 1997/169
(**b**) S.I. 1997/171
(**c**) S.I. 1997/170

SCHEDULE 1

Rule 2(1) and (2)

FORM OF APPLICATION FOR A SPECIAL MEASURES DIRECTION UNDER SECTION 19 OF THE YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999

An application must be received by the court administration officer within 28 days of—

(a) the date appointed for trial; or

(b) the lodging of a notice of appeal under paragraph 18(3) of Schedule 3 to the Armed Forces Act 1976.

This form may also be used where an extension of time has been granted for the making of this application.

A copy of this form must be given at the same time to the other party or parties to the case.

PART A

To be completed by all applicants

Details required	*Notes*
Details of witness Name of Witness: Date of birth of witness: If a previous application has been made to tender in evidence a video recording of testimony from the witness, give the date and (if known) result of that application.	An application by the defence for evidence to be given through a live television link or by means of a video recording need not disclose who that witness is, except where the witness is to give evidence in support of an alibi. If the applicant is the prosecutor, give the name of the witness (otherwise leave blank).
Case details Details of Prosecuting Authority: Case number: Accused(s): surname: forenames: Court-martial date and location (if known): Charges:	 Give brief details of those charges to which this application applies.
Details of application Specify the special measures being sought:	

Details required	*Notes*
State the grounds on which the witness relies in support of the application for a special measures direction:	The statement should make clear whether the applicant seeks automatic eligibility (see Reason for application section below) or whether the applicant alleges that the quality of the evidence will be reduced unless a direction is given. In the latter case, the grounds on which the applicant alleges that the quality of the witness's evidence is likely to be diminished in terms of completeness, coherence and accuracy should be clearly stated. Give a description of evidence submitted in support of this application: This requirement is optional. Examples of evidence might be: birth certificate; medical report; expert evidence; police report.
Arrangements which may be made available Give a description of the arrangements relevant to the measures applied for which may be made available at the court in which it is likely the hearing will take place:	
Reason for application A. Is the application for special measures for any of the following? (i) video recorded evidence in chief only; (ii) live link only; (iii) both these measures? Yes/No B. Is the witness a child witness in need of special protection at the time that any relevant recording was made? Yes/No C. Is the witness a child under 17 but not a child witness in need of special protection? Yes/No If the answer to both A and B is "Yes", information concerning the	A child witness in need of special protection is defined by Section 21 of the Youth Justice and Criminal Evidence Act 1999. Section 21 of the Youth Justice and Criminal Evidence Act 1999.

Details required	*Notes*
grounds of application and any views of the witness need not be provided. If the answer to C is "Yes" and there is no application for either video recorded evidence in chief or live link (or both), state the reasons why it is said that the special measures of video evidence in chief, live link (or both) would NOT maximise the quality of the child's evidence. For all witnesses over 17 years and for applications for witnesses under 17 years for measures other than video recorded evidence in chief or live link: Give the grounds for believing the special measures being sought in this application will improve the quality of the witness's evidence: Give the views of the witness as to why the measures sought in this application are required:	Section 21 of the Youth Justice and Criminal Evidence Act 1999 sets out a primary rule in favour of providing child witnesses with video recorded evidence in chief and live link unless, for witnesses who are not child witnesses in need of special protection, this would not be likely to maximise the quality of the witness's evidence.
Material change of circumstances Give a description of any material change of circumstances relied upon to support this application:	This requirement applies only where— (a) a special measures direction is already in force and application is being made to discharge or vary the direction, or (b) a previous application for a special measures direction was refused and this application seeks to reverse that decision.

PART B

To be completed if the application is for evidence to be given through a live television link

Details required	*Notes*
Details of application Give— (a) the address of any venue from which the witness will give evidence if the court's own live television link is not used: (b) the name of the person who it	An application by the defence need not disclose the name of

Details required	*Notes*
is proposed will accompany the witness: (c) the occupation of this person: (d) the relationship (if any) of this person to the witness:	the person proposed to accompany the witness if disclosure could lead to the identification of the witness.
Grounds State why it is believed that this person should accompany the witness:	

PART C

To be completed if the application is to tender in evidence a video recording under section 27 of the Youth Justice and Criminal Evidence Act 1999

Details required	*Notes*
Video recording(s) Statement as to circumstances in which video recording made: Date(s) of video recording(s): Time(s) of video recording(s): Location and normal function of premises where video recording made:	These details need to be completed only to the extent that the information is not contained in the video recording itself. Give the times at which recording began and finished, including details of any interruptions. Give address of premises where recording made and state the usual function of those premises.
Details of those present while recording made Give details of each person present at any point during the recording:	Include name, age and occupation of anyone present; time for which present; relationship (if any) to witness and to the accused.
Use of an intermediary 1. Was any person used as an intermediary in the making of the video recording? If so, has the judge advocate's approval for the purposes of section 29 of the Youth Justice and Criminal Evidence Act 1999 been given? If it has, give details.	The judge advocate's approval for the purposes of section 29 of the Youth Justice and Criminal Evidence Act 1999 must be given before the special measures direction is given. The judge advocate's approval may be sought at the hearing of the application for the special measures direction. If the judge advocate's approval has not been obtained, the information required in Part D of this Form must be given.

Details required	*Notes*
2. Did the intermediary make the appropriate declaration before the interview began? Is the declaration recorded on the video recording?	 The declaration is— "I solemnly, sincerely and truly declare that I will well and faithfully communicate 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."
Equipment used Give a description of— (a) the equipment used for the recording: (b) any devices used as an aid to communication:	 The description must include the following information— Number and type of cameras used (fixed or mobile); the number and location of microphones; the video format used; and whether it offered single or multiple recording facilities and if it did which were used. In the case of communication aids, describe how the device was operated. State also whether the equipment was provided for or owned by the witness or the intermediary and whether any additional needs arose for the witness or the intermediary as a result of using the devices. (Refer to the examples given in Part D, paragraph 9(b)).
Recordings of part only of an interview State whether the video recording contains part only of the interview with the witness:	 A copy of any video recordings of other parts of the interview with the witness which it is not proposed to tender in evidence must also be provided to the court and the other parties. The details of each such recording must be given as above. Use separate sheets where necessary.
Details of copy State in respect of each video recording whether it is a copy, and give the following details in respect of each copy— Name and address of person who has the mastertape: When, and by whom, the copy was made:	
Attendance and supply of copies In the opinion of the applicant— (a) is the witness available for cross-examination? (b) if the witness is not available for cross-examination, have the parties agreed that the witness need not be available? Has the agreement of the other	

Details required	*Notes*
parties to the video recording(s) being tendered as evidence been sought? Have copies of the video recording(s) to which this application relates been disclosed to the other parties? Has a copy of this notice and the video recording(s) to which it relates been served on each party to the proceedings?	Where the application is by the accused, the video recording(s) do not have to be served on the prosecution until the close of the prosecution case at the trial.

PART D

To be completed if the application is for the examination of the witness to be conducted through an intermediary

Details required	*Notes*
Details of application 1. Give a description of the communication needs of the witness: 2. State why you consider that the quality of the evidence given by the witness would be improved by use of an intermediary: 3. Give the name of the person through whom it is proposed the examination of the witness be conducted: 4. What is the occupation of this person and what is the person's area of specialism: 5. Is this person related to the witness? If not related to the witness, does the intermediary know the witness and, if so, how and to what extent? 6. Is this person registered with the Intermediary Registration Board? 7. Why do you consider this person has the necessary skills to meet the particular	Where an assessment has been undertaken by a relevant professional, give details of where and by whom the assessment was carried out. If the person is not registered with the IRB, give the reason why this person is preferred to an IRB registered person.

Details required	*Notes*
communication needs of the witness: 8. Has this person been used in the pre-trial investigation? 9. Communication aids— (a) give details of any device used or which it is intended to use as a communication aid: (b) are there any issues which arise as a result of this device being used?	 If so, give reasons why it is proposed to use the same person throughout the proceedings. Give details of any devices that may be used and how they are operated. Examples might be: (a) whether breaks might be needed for the witness and/or the intermediary: (b) the facilities that may be needed for the use of the devices, for example power sources.

Signature of applicant or applicant's Solicitor:	Date:

SCHEDULE 2

Rules 16(1) and 19(4)

FORM A

Rule 16(1) - Form of application for a reporting direction under section 46 of the Youth Justice and Criminal Evidence Act 1999

Details required	*Notes*
Details of applicant	
Details of witness Name of Witness: Date of birth of witness:	If these details have not been given, please provide the reason below. These details need not be given where the applicant can show that there is good reason for not providing such details in order to protect the true identity of that witness.
Case details Details of Prosecuting Authority: Case number: Accused(s): surname: forenames: Court-martial date and location (if known): Charges:	 Give brief details of those charges to which this application applies.
Details of application Specify the grounds on which the applicant relies in support of the application for the reporting	The statement should make clear why, in the applicant's view, if the direction is not given— (a) the quality of the evidence given by the witness, or (b) the level of co-operation given by the witness to any party to the proceedings in the preparation of that party's

Details required	*Notes*
direction: Give a description of evidence submitted in support of this application: Set out the views of the witness for whom the direction is sought on this application:	case, is likely to be diminished by fear or distress if the witness is identified by members of the public as a witness in the proceedings. This requirement is optional. Examples of evidence might be: Police report; Medical report.
Does the application need to be determined URGENTLY (i.e. on less than 5 days' notice)?	If so, give reasons and specify any time-limit by which the application needs to be determined.
Public interest and interests of justice State why a reporting direction— (a) is in the interests of justice; and (b) is in the public interest in avoiding the imposition of a substantial and unreasonable restriction on the reporting of proceedings.	
Signature of applicant or applicant's Solicitor:	Date:

FORM B

Rule 19(4) - Form of application for an excepting direction under section 46(9) of the Youth Justice and Criminal Evidence Act 1999

Details required	*Notes*
Details of applicant	
Details of witness Name of Witness: Date of birth of witness:	If these details have not been given, please provide the reason below. These details need not be given where the applicant can show that there is good reason for not providing such details in order to protect the true identity of that witness.
Case details Details of Prosecuting Authority: Case number: Accused(s): surname: forenames: Court-martial date and location (if known):	

Details required	*Notes*
Charges: Date of reporting direction given (if already made): Is a copy of the reporting direction attached?	Give brief details of those charges to which this application applies.
Details of application State the extent to which you invite the court to dispense with the restrictions imposed by the reporting direction. In particular state why— (a) a reporting direction is or would be a substantial and unreasonable restriction on the reporting of proceedings and it is in the public interest to remove or relax that restriction; or (b) it would be in the interests of justice to do so. If the applicant is not a party to the proceedings, state why they are directly affected by a reporting direction given in relation to a witness in those proceedings.	
Signature of applicant or applicant's Solicitor:	Date:

EXPLANATORY NOTE

(This note is not part of the Order)

These Rules make provision for a range of measures designed to help young, disabled, vulnerable or intimidated witnesses give evidence in court-martial proceedings. These measures are contained in Part 2 of the Youth Justice and Criminal Evidence Act 1999 (c. 23) ("the Act"), certain provisions of which are applied, with modifications, to courts-martial proceedings by the Youth Justice and Criminal Evidence Act 1999 (Application to Courts-Martial) Order 2006 (S.I. 2006/2886).

Part 2 of these Rules contains provisions relating to applications for a special measures direction in the case of witnesses who require assistance on the grounds of age or incapacity or on the grounds of fear or distress about testifying. These measures include the use of screens, live television links and video-recorded evidence. Rule 2 provides for an application for a special measures direction to be made in the form prescribed in Schedule 1 to the Rules. Rule 3 provides rules for extending the time for making an application and rule 4 provides for late applications. Rule 5 provides for an application to be made to vary or discharge a special measures direction which has already been made and rule 6 provides for renewal applications where a material change of circumstances has occurred since an application was refused. Additional requirements are imposed where the application relates either to the giving of evidence by means of live television link (rule 7) or the admission of a video recording of an interview with a witness as evidence in chief of the witness (rule 8). Rule 9 provides for the mutual disclosure between parties of expert evidence to be adduced in connection with the application for the special measures direction and rule 10 sets out the declaration required to be made by an intermediary.

Part 3 of these Rules deals with restrictions on cross-examination of a witness by an accused acting in person. Rule 11 sets out the procedure for the judge advocate to notify the accused that he is prevented from cross-examining the witness and the procedure required for the accused to appoint a legal representative to conduct the cross-examination. Rule 12 deals with the appointment of a legal representative by the judge advocate and rule 13 deals with the appointment of that legal representative by the accused. Rule 14 makes provision for the prosecutor to make an application to the judge advocate to give a direction that the accused be prevented from cross-examining a witness.

In Part 4 of these Rules, rule 15 makes provision for an application under section 41(2) of the Act for leave to adduce evidence or ask questions about a complainant's sexual history.

Part 5 of these Rules contains provisions relating to applications for reporting directions in respect of adult witnesses under section 46 of the Act. Rule 16 provides for applications for a reporting direction to be made using Form A to Schedule 2 of the Rules or orally. Rule 17 makes provision for any party to the proceedings to oppose an application and rule 18 makes provision for urgent applications to be made in exceptional circumstances. Rule 19 contains provision for applications to be made (using Form B to Schedule 2 of the Rules) for an excepting direction to dispense with the restrictions imposed by a reporting direction. Rule 20 contains provisions relating to applications for the revocation of reporting directions or the variation or revocation of an excepting direction and rule 21 contains provision for applications for an extension of time. Rule 22 sets out the procedure for determining applications for reporting directions.

Rules 23 and 24 contain consequential revocations and amendments to existing courts-martial rules.

This Statutory Instrument has been printed in substitution of the SI of the same number and is being issued free of charge to all known recipients of that Statutory Instrument

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