



Statutory Document No. 1025/10

HIGH COURT ACT 1991
CRIMINAL JUSTICE, POLICE AND COURTS ACT 2007

RULES OF THE HIGH COURT OF JUSTICE (AMENDMENT) (NO. 2) 2010

<i>Laid before Tynwald</i>	<i>18th January 2011</i>
<i>Coming into operation</i>	<i>1 February 2011</i>

The Deemsters make these Rules under section 25 of the High Court Act 1991¹ and section 35 of the Criminal Justice, Police and Courts Act 2007².

1. Title and commencement

- (1) The title of these Rules is the Rules of the High Court of Justice (Amendment) (No. 2) 2010.
- (2) These Rules come into operation on 1 February 2011.

2. Criminal appeals: evidence by live link or video recording

After rule 14.14 of the Rules of the High Court of Justice 2009³ insert —

"14.14A Criminal appeals — evidence by live link

- (1) In this rule "section 30 direction" means a direction under section 30 of the Criminal Justice, Police and Courts Act 2007 that a witness may give evidence by live link (within the meaning of Part 9 of that Act).
- (2) An application for a section 30 direction must be made by giving notice in writing to the Chief Registrar, which must include —
 - (a) the name of the applicant;

¹ 1991 c.12

² 2007 c.3

³ SD 352/09

Price £1.35

- (b) the name of the witness;
 - (c) the nature of the evidence to be given by the witness (eg. expert evidence as to handwriting, evidence as to character, evidence in support of an alibi, or as the case may be);
 - (d) the age of the witness and, if the witness is under the age of 17 —
 - (i) the name and occupation of the person who it is proposed shall accompany the witness; and
 - (ii) the relationship (if any) of that person to the witness; and
 - (e) the grounds for the application, including details of the matters specified in section 30(6) of that Act and any other relevant circumstances.
- (3) An application for a section 30 direction must be made not less than 21 days before the date of the sitting of the appeal court at which the evidence is to be given.
- (4) A copy of the notice under paragraph (1) must be sent by the applicant to every other party to the appeal.
- (5) A party who opposes an application for a section 30 direction must within 7 days of receiving a copy of a notice under paragraph (1) notify the applicant and the Chief Registrar in writing of his opposition, giving his reasons for doing so.
- (6) An application for a section 30 direction —
- (a) if unopposed, may be determined by a single judge in chambers with or without a hearing; and
 - (b) if opposed, shall be determined by a single judge in chambers at a hearing.
- (7) If the application is to be determined at a hearing, the Chief Registrar must notify the parties of the time and place of the hearing.
- (8) The Chief Registrar must notify all the parties of the decision of the appeal court on the application and, if the application has been refused, of the time and place at which the reasons for refusing the application will be stated in open court.
- (9) A witness under the age of 17 may not give evidence by a live link unless, at the time the evidence is given, the witness is accompanied —

- (a) by a person approved for the purpose by the court and named in the section 30 direction, and
 - (b) unless the court otherwise directs, by no other person.
- (10) Where an application for a section 30 direction in respect of a witness has been refused, no further application for such a direction may be made in respect of that witness unless there has been a material change of circumstances (which must be specified in the application).
- (11) An application for rescission under section 31(3) of the Act of a section 30 direction must be made by giving notice in writing to the Chief Registrar, which must include the grounds for the application, including details of the material change of circumstances justifying the rescission.
- (12) An application under paragraph (11) must be made not less than 14 days before the date of the sitting of the appeal court at which the evidence is to be given.
- (13) Paragraphs (4) to (6) apply to an application under paragraph (11) as they apply to an application for a section 30 direction.
- (14) The Chief Registrar must notify all the parties of the decision of the appeal court on an application under paragraph (11) and of the time and place at which the reasons for the decision will be stated in open court.

14.4B Criminal appeals — evidence by video recording

- (1) In this rule "section 36 direction" means a direction under section 36(1)(f) of the Criminal Justice, Police and Courts Act 2007 that a video recording should be admitted as evidence in chief of a witness.
- (2) An application for a section 36 direction must be made by giving notice in writing to the Chief Registrar, which must include —
- (a) the name of the applicant;
 - (b) the name and date of birth of the witness;
 - (c) the date on which the video recording was made;
 - (d) a statement complying with paragraph (7) of the circumstances in which the video recording was made;
 - (e) the date on which the video recording was disclosed to the other party or parties; and

- (f) a statement that the applicant believes that the witness is willing and able to attend the hearing of the appeal for cross-examination.
- (3) Where it is proposed to tender part only of a video recording of an account made by the witness —
 - (a) the notice under paragraph (2) must specify that part; and
 - (b) the statement under paragraph (2)(d) must relate to the circumstances in which the entire recording was made.
 - (4) The application must be accompanied by the entire video recording.
 - (5) The application must be made not less than 21 days before the date of the sitting of the appeal court at which the evidence is to be given.
 - (6) A copy of —
 - (a) the notice under paragraph (2); and
 - (b) the entire video recording,must be sent by the applicant to every other party to the proceedings.
 - (7) The statement under paragraph (2)(d) must include the following information, except so far as it is contained in the video recording itself —
 - (a) the times at which the recording began and finished, including details of any interruption;
 - (b) the place at which the recording was made and the usual function of the place;
 - (c) the following particulars of any person present at any point during the recording —
 - (i) his name, age and occupation;
 - (ii) the time or times he was present; and
 - (iii) his relationship (if any) to the witness and to the defendant;
 - (d) a description of the equipment used, including —
 - (i) the number of cameras used, and whether fixed or mobile;
 - (ii) the number and location of microphones;
 - (iii) the video format used; and

- (iv) whether there were single or multiple recording facilities;
 - (e) if the recording is a copy, the location of the master tape, disc or other record and details of when any by whom the copy was made.
- (8) A party who receives a notice under paragraph (2) must, within 7 days of receiving the notice, notify the applicant and the Chief Registrar in writing —
- (a) whether he objects to the admission of the whole or any part of the video recording, giving his reasons (which must state in particular why it would not be in the interests of justice for it to be admitted); and
 - (b) whether he would agree to the admission of part of the video recording and, if so, which part or parts.
- (9) After the expiry of the period referred to in paragraph (8), the appeal court shall decide whether the application should be dealt with at a hearing or without a hearing; and the Chief Registrar must notify the applicant and, where necessary, the other party or party or parties of the time and place of any hearing.
- (10) The application shall be dealt with by a single judge in chambers, and shall be dealt with at a hearing where any party notifies the Chief Registrar that he objects to the admission of the whole or any part of the video recording.
- (11) The Chief Registrar must notify all the parties of the appeal court's decision on any application for a section 36 direction, stating whether the whole or specified parts only of the video recording are to be admitted in evidence.

MADE 29 November 2010

DC Doyle

Her Majesty's Acting First Deemster and Clerk of the Rolls

DC Doyle

Second Deemster

EXPLANATORY NOTE

(This note is not part of the Rules.)

These Rules amend the Rules of the High Court of Justice 2009 to make provision for evidence to be given by live link or video recording in criminal appeals.