



**AMENDMENT NO. 21 TO THE CONSOLIDATED CRIMINAL
PRACTICE DIRECTION
(CRIMINAL PROCEEDINGS: WITNESS ANONYMITY
ORDERS; FORMS)**

This Practice Direction amends Part I of, and Annex D to, the Consolidated Criminal Practice Direction handed down by the Lord Chief Justice on 8th July, 2002, as subsequently amended.

It sets out:

- (a) paragraphs which prescribe the procedure to be followed on an application under the Criminal Evidence (Witness Anonymity) Act 2008; and
- (b) forms for use in connection with Part 63 of the Criminal Procedure Rules (appeal to the Crown Court), as substituted by the Criminal Procedure (Amendment) Rules 2008.

The amendment of Part I of the Consolidated Criminal Practice Direction has effect at once. The amendment of Annex D takes effect on 6 October 2008, when the Criminal Procedure (Amendment) Rules 2008 come into force.

Part I - Directions of General Application

Paragraphs I.15.1 to I.15.24, as set out in Schedule 1 to this Practice Direction, are added to Part I, after paragraph I.14.3.

Annex D

The table at the beginning of Annex D is amended by the addition of the entries set out in Schedule 2 to this Practice Direction.

The forms of:

- (a) appeal notice, and
- (b) notice of abandonment of appeal

for use in connection with Part 63 of the Criminal Procedure Rules, attached to this Practice Direction, are added to the forms in Annex D.

List of included Practice Directions in Annex A

At the end of the list of included Practice Directions in Annex A to the Consolidated Criminal Practice Direction there is added:

“Amendment No. 21 to the Consolidated Criminal Practice Direction (Criminal Proceedings: Witness Anonymity Orders; Forms).”

President of the Queen’s Bench Division

Date: August 2008

SCHEDULE 1: PARAGRAPHS ADDED TO PART I

WITNESS ANONYMITY ORDERS

I.15 WITNESS ANONYMITY ORDERS

I.15.1 Pending the making by the Criminal Procedure Rule Committee of specific rules for the purpose, this direction sets out the procedure to be followed on an application for a witness anonymity order. The court's power to make such an order is conferred by the Criminal Evidence (Witness Anonymity) Act 2008 (in this direction, 'the Act'). The court's power to give case management directions is conferred by Part 3 of the Criminal Procedure Rules. Section 3 of the Act provides specific relevant powers and obligations.

Case management

I.15.2 Where such an application is proposed, with the parties' active assistance the court should set a realistic timetable, in accordance with the duties imposed by rules 3.2 and 3.3. Where possible, the trial judge should determine the application, and any hearing should be attended by the parties' trial advocates.

Service of evidence and disclosure of prosecution material pending an application

I.15.3 Where the prosecutor proposes an application for a witness anonymity order it is not necessary for that application to have been determined before the proposed evidence is served. In most cases an early indication of what that evidence will be if an order is made will be consistent with a party's duties under rules 1.2 and 3.3. The prosecutor should serve with the other prosecution evidence a witness statement setting out the proposed evidence, redacted in such a way as to prevent disclosure of the witness' identity, as permitted by section 3(4) of the Act. Likewise the prosecutor should serve with other prosecution material disclosed under the Criminal Procedure and Investigations Act 1996 any such material appertaining to the witness, similarly redacted.

The application

I.15.4 An application for a witness anonymity order should be made as early as possible and within any period directed by the court. It should be in writing and in two parts, one containing non-confidential information and the other confidential

information. The applicant prosecutor or defendant should serve the non-confidential part on the other parties and on the court. The confidential part should be served only on the court and, where the applicant is a defendant, on the prosecutor. In accordance with rules 1.2 and 3.3, the applicant must provide the court with all available information relevant to the considerations to which the Act requires a court to have regard.

I.15.5 The non-confidential part (to be served on all parties and on the court) should contain nothing that might reveal the witness' identity. Consistently with that, it should:

- (a) specify the measures proposed by the applicant;
- (b) explain how the proposed order meets the conditions prescribed by section 4 of the Act;
- (c) explain why no measures other than those proposed will suffice, such as:
 - (i) an admission of the facts that would be proved by the witness,
 - (ii) an order restricting public access to the trial,
 - (iii) reporting restrictions, in particular under section 46 of the Youth Justice and Criminal Evidence Act 1999 or under section 39 of the Children and Young Persons Act 1933,
 - (iv) a special measure ordered under section 19 of the Youth Justice and Criminal Evidence Act 1999,
 - (v) introduction of the witness' written statement as hearsay evidence, under section 116 of the Criminal Justice Act 2003, or
 - (vi) arrangements for the protection of the witness; and
- (d) attach:
 - (i) a witness statement setting out the proposed evidence, redacted in such a way as to prevent disclosure of the witness' identity,
 - (ii) on a prosecutor's application, any prosecution material disclosed under the Criminal Procedure and Investigations Act 1996 appertaining to the witness, similarly redacted, and
 - (iii) any defence statement that has been served, or as much information from any other source as may be available to the applicant which gives particulars of the defence.

I.15.6 The confidential part (to be served only on the court and on any respondent prosecutor) should:

- (a) be clearly marked to show that its contents are confidential; and
- (b) contain the information withheld from the non-confidential part, including:

(i) the identity of the witness, or (where a prosecutor so applies) the reasons why the applicant invites the court to exercise the power under section 3(2)(a) of the Act to waive that requirement,

(ii) the unredacted witness statement from which the redacted version has been prepared,

(iii) on a prosecutor's application, the unredacted version of any prosecution material from which a redacted version has been prepared, and

(iv) such further material as the applicant relies on to establish that the proposed order meets the conditions prescribed by section 4 of the Act.

I.15.7 The confidential part of the application usually should be served at the same time as the non-confidential part. Exceptionally, and subject to any contrary direction by the court, its service may be postponed until after a hearing of the non-confidential part.

Response to the application

I.15.8 A party upon whom an application for a witness anonymity order is served should serve a response on the other parties and on the court within 14 days. That period may be extended or shortened in the court's discretion.

I.15.9 To avoid the risk of injustice a respondent must actively assist the court. If not already done, a respondent defendant should serve a defence statement under section 5 or 6 of the Criminal Procedure and Investigations Act 1996, so that the court is fully informed of what is in issue. The prosecutor's continuing duty to disclose material under section 7A of the Criminal Procedure and Investigations Act 1996 may be engaged by a defendant's application for a witness anonymity order. Therefore a prosecutor's response should include confirmation that that duty has been considered. Nothing disclosed under the 1996 Act by a respondent prosecutor to a respondent defendant should contain anything that might reveal the witness' identity. A respondent prosecutor should provide an applicant defendant and the court with all available information relevant to the considerations to which the Act requires a court to have regard, whether or not that information falls to be disclosed under the 1996 Act.

Determination of the application

I.15.10 All parties must have an opportunity to make oral representations to the court on an application for a witness anonymity order: section 3(6) of the Act. However, a hearing may not be needed if none is sought. Where, for example, the witness is an investigator who is recognisable by the defendant but known only by an assumed

name, and there is no likelihood that the witness' credibility will be in issue, then the court may indicate a provisional decision and invite representations within a defined period, usually 14 days, including representations about whether there should be a hearing. In such a case, where the parties do not object the court may make an order without a hearing. Or where the court provisionally considers an application to be misconceived, an applicant may choose to withdraw it without requiring a hearing. Where the court directs a hearing of the application then it should allow adequate time for service of the representations in response.

I.15.11 The hearing of an application for a witness anonymity order usually should be in private. The court has power to hear a party in the absence of a defendant and that defendant's representatives: section 3(7) of the Act. In the Crown Court, a recording of the proceedings will be made, in accordance with rule 65.8(2). The Crown Court officer must treat such a recording in the same way as the recording of an application for a public interest ruling. It must be kept in secure conditions, and the arrangements made by the Crown Court officer for any transcription must impose restrictions that correspond with those under rule 65.9(2)(a).

I.15.12 At a hearing the court will receive, usually in this sequence, representations by:

1. the applicant, in each respondent's presence;
2. each respondent;
3. the applicant in reply, in each respondent's presence; then finally
4. the applicant in elaboration of the confidential part of the application, in a respondent defendant's absence but in the presence of a respondent prosecutor.

I.15.13 Where the confidential part of the application is served on the court before the last stage of the hearing, the court may prefer not to read the information in that part until that last stage.

I.15.14 The court may adjourn the hearing at any stage, and should do so if its duty under rule 3.2 so requires.

I.15.15 On a prosecutor's application, the court is likely to be assisted by the attendance of a senior investigator or other person of comparable authority who is familiar with the case.

I.15.16 During the last stage of the hearing it is essential that the court test thoroughly the information supplied in confidence in order to satisfy itself that the conditions prescribed by the Act are met. At that stage, if the court concludes that this is the only way in which it can satisfy itself as to a relevant condition or consideration, exceptionally it may invite the applicant to present the proposed witness to be questioned by the court. Any such questioning should be carried out at such a time, and the witness brought to the court in such a way, as to prevent disclosure of his or her identity.

I.15.17 The court may ask the Attorney General to appoint special counsel to assist. However, it must be kept in mind that, ‘Such an appointment will always be exceptional, never automatic; a course of last and never first resort. It should not be ordered unless and until the trial judge is satisfied that no other course will adequately meet the overriding requirement of fairness to the defendant’: *R v H* [2004] 2 A.C. 134, at paragraph 22. Whether to accede to such a request is a matter for the Attorney General, and adequate time should be allowed for the consideration of such a request.

I.15.18 Following a hearing the court should announce its decision on an application for a witness anonymity order in the parties’ presence and in public. The court should give such reasons as it is possible to give without revealing the witness’ identity. In the Crown Court, the court will be conscious that reasons given in public may be reported and reach the jury. Consequently, the court should ensure that nothing in its decision or its reasons could undermine any warning it may give jurors under section 7(2) of the Act. A record of the reasons must be kept. In the Crown Court, the announcement of those reasons will be recorded.

Order

I.15.19 Where the court makes a witness anonymity order it is essential that the measures to be taken are clearly specified in a written record of that order approved by the court and issued on its behalf. An order made in a magistrates’ court must be recorded in the court register, in accordance with rule 6.1.

I.15.20 Self-evidently, the written record of the order must not disclose the identity of the witness to whom it applies. However, it is essential that there be maintained some means of establishing a clear correlation between witness and order, and especially where in the same proceedings witness anonymity orders are made in respect of more than one witness, specifying different measures in respect of each. Careful preservation of the application for the order, including the confidential part, ordinarily will suffice for this purpose.

Discharge or variation of the order

I.15.21 Section 6 of the Act allows the court to discharge or vary a witness anonymity order: on application, if there has been a material change of circumstances since the order was made or since any previous variation of it; or on its own initiative. Rule 3.6 allows the parties to apply for the variation of a pre-trial direction where circumstances have changed.

I.15.22 The court should keep under review the question of whether the conditions for making an order are met. In addition, consistently with the parties’ duties under rules 1.2 and 3.3, it is incumbent on each, and in particular on the applicant for the order, to keep the need for it under review.

I.15.23 Where the court considers the discharge or variation of an order, the procedure that it adopts should be appropriate to the circumstances. As a general rule, that procedure should approximate to the procedure for determining an application for an order. The court may need to hear further representations by the applicant for the order in the absence of a respondent defendant and that defendant's representatives.

Retention of confidential material

I.15.24 If retained by the court, confidential material must be stored in secure conditions by the court officer. Alternatively, subject to such directions as the court may give, such material may be committed to the safe keeping of the applicant or any other appropriate person in exercise of the powers conferred by (as the case may be) rule 3.5(1), 63.4(b) or 65.8(2)(c). If the material is released to any such person, the court should ensure that it will be available to the court at trial.

SCHEDULE 2: FORMS ADDED TO ANNEX D

Rule in connection with which the form is to be used	Description of form	Former Rule which prescribed the form	Former number of the form
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Part 63 Appeal to the Crown Court

Rule 63.3	Form of appeal notice		
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Rule 63.8	Form of notice of abandonment of appeal		
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