



Ministry of JUSTICE

Ministry of Justice Circular 25/06/2007 Complainants in sexual offences tried in the Crown Court: implementation of Section 27 of the Youth Justice and Criminal Evidence Act 1999.

From: Office for Criminal Justice Reform (OCJR) – Policy and Process Directorate,
Better Trials Unit (BTU)

FOR MORE INFORMATION CONTACT:

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THIS CIRCULAR IS ADDRESSED TO:

Lord Chief Justice, Deputy Chief Justice, Senior Presiding Judge for England and Wales, Chief Officers of Police in England and Wales, Director of Public Prosecutions, Chief Crown Prosecutor, Court Managers Crown Courts, HMCS Area Directors, Clerks to the Justices, Department for Constitutional Affairs, Department of Health, Directors of Social Services, Police Forces in England and Wales, Lords Justices of Appeal, Lords of Appeal in Ordinary, Queen's Bench Division, Crown Court Judges, Circuit Judges, Administrators and Group Judges, District Judges (Magistrates' Courts), Chairmen of the Justices, Council of Circuit Judges, Local Government Association, Magistrates' Association, Judicial Studies Board, Bar Council, Criminal Bar Association, Law Society, Victim Support

Broad Subject: Criminal Justice

Sub Category: Witnesses

Purpose of this Circular

1. The purpose of this Circular is to confirm the extended availability of the provisions of section 27 (video recorded evidence-in-chief) of the Youth Justice and Criminal Evidence Act 1999 (“the Act”): A direction under sections 19 and 27 will be available in relation to complainants who are eligible for special measures under section 17(4) of the Act, on the grounds of fear or distress about testifying in proceedings for all sexual offences tried in the Crown Court where investigations of the offence began on or after 1 September 2007.

Background

2. The Home Office Circulars: 6/2002, 35/2002, 38/2002, 58/2003, 12/2004, 31/2004, 48/2004 and 39/2005 referred to the implementation of special measures. Particularly relevant to this Circular is 39/2005 which referred to the availability of section 27. Until 1 September 2007 section 27 is only available for: all vulnerable witnesses (section 16 of the Act) in the Crown Court; child witnesses in need of special protection as defined by section 21 of the Act in the magistrates' courts (see Appendix 2 for implementation table).

Notification arrangements

3. Section 27 was commenced on 24 July 2002 by SI 2002/1739. Under the notification arrangements set out in section 18(2) of the 1999 Act, special measures are only available to courts when they have been so notified by the Secretary of State.

4. A notification letter is attached at Appendix 1, which is intended to inform all Crown Courts of the extended availability of section 27. Any further extension of this or any other special measure will be preceded by a Circular and the courts will also be notified.

Record of Visual Interview

5. As set out in HO Circular 39/2005 the extension of section 27 was delayed to allow for a full assessment of a Record of Visual Interview (ROVI). Use of a ROVI will be standard practice if a section 27 special measure is to be used.

6. The overall function of a ROVI is to contribute towards the effective investigation and management of a case by guiding investigating officers and prosecutors through their viewing of the interview. It is not intended that a full transcript will be called for until it is clear that a case will be contested (i.e. post-Plea and Case Management Hearing Not-Guilty Plea). Also Senior Investigating Officers will have the discretion to opt for full transcription at an earlier stage for investigative purposes.

7. During the pre-charge investigation a ROVI should assist informed decision-making as to: whether the witness should be re-interviewed; what further enquiries should be conducted; planning interviews with alleged offender(s); and pre-charge advice/charging decisions.

8. Post-charge a ROVI should assist: prosecutors to make decisions about editing; prosecutors to prepare for a pre-trial interview with the witness; prosecutors at bail applications and guilty pleas; transcribers at the Crown Prosecution Service (CPS) Video Transcription Unit (VTU); and prosecuting and defence advocates in the preparation of their case.

9. A ROVI should be completed on form MG15 and is an alternative to a full verbatim transcription. The content of a ROVI is standardised. It is intended to be succinct but containing all essential details (including identification issues, points to prove the offence(s), any threats and admissions made and key statements made by the witness).

10. Guidance on the completion of a ROVI has been agreed by CPS and the Association of Chief Police Officers Investigative Interviewing Steering Group (The Prosecution Team). It is contained in the CPS guidance Video Recorded Evidence in Appendix D - *Guidance on the completion of a Record of Video Interview (ROVI)* and it is available on the CPS website at: http://cps.gov.uk/legal/section13/chapter_r_app_d.html.

Implementation of Special Measures

11. Home Office Circulars 58/2003, 12/2004, 31/2004, 48/2004 and 39/2005 contained a summary of the availability of special measures and a provisional timetable for the implementation of the remaining special measures. An updated version of that table is attached at Appendix 2.

Yours faithfully,

Mark de Pulford
Head
Better Trials Unit
Office for Criminal Justice Reform

Appendix 1

To: HM Courts Service Area Directors – England and Wales
The Clerks to the Justices – England and Wales

20 June 2007

Dear Sir/Madam

YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999: IMPLEMENTATION OF SECTION 27 IN THE CROWN COURT FOR COMPLAINANTS IN SERIOUS SEX OFFENCE CASES

I am writing on behalf of the Secretary of State, by way of notification under section 18(2)(a) of the Youth Justice and Criminal Evidence Act 1999 (“the 1999 Act”) and section 13 of the Interpretation Act 1978 (anticipatory exercise of powers).

Please note that arrangements should be made available for the purposes of a special measures direction under sections 19 and 27 of the 1999 Act (video recorded evidence-in-chief) in relation to complainants, eligible by virtue of section 17(4), in proceedings for sexual offences tried in the Crown Court where the investigation of the offence started on or after 1 September 2007.

The effect of this notification is that a special measures direction, providing for a video recording of an interview of the complainant to be admitted as evidence-in-chief, pursuant to sections 19 and 27 of the 1999 Act, may be given in proceedings for sexual offences tried in the Crown Court where the investigation of the offence started on or after 1 September 2007.

Our contact point in the first instance for questions about this notice is Stephen Underwood, whose telephone number is 020 7035 8474, and whose email address is stephen.underwood@cjs.gsi.gov.uk

Yours faithfully

Mark de Pulford
Head
Better Trials Unit
Office for Criminal Justice Reform

Appendix 2

YOUTH JUSTICE & CRIMINAL EVIDENCE ACT 1999: SPECIAL MEASURES IMPLEMENTATION (ENGLAND & WALES)

<i>Availability in criminal proceedings (England & Wales) from 1 September 2007 For availability up to 01/09/07 please see table attached to HO circular 39/2005</i>	CROWN COURT		MAGISTRATES' COURTS	
	Section 16 witnesses (children & vulnerable adults)	Section 17 witnesses (intimidated/fear or distress)	Section 16 witnesses (children & vulnerable adults)	Section 17 witnesses (intimidated/fear or distress)
Section 23 <i>screening witness from accused</i>	Full availability (note 1)	Full availability (note 1)	Full availability (note 2)	Full availability (note 2)
Section 24 <i>evidence by live link</i>	Full availability (note 1)	Full availability (note 1)	Full availability (note 3 & 4)	Full availability (note 4)
Section 25 <i>evidence given in private</i>	Full availability (note 1)	Full availability (note 1)	Full availability (note 2)	Full availability (note 2)
Section 26 <i>removal of wigs and gowns</i>	Full availability (note 1)	Full availability (note 1)	Not applicable	Not applicable
Section 27 <i>video recorded evidence in chief</i>	Full availability (note 1)	Partial availability – <i>for complainants in serious sexual offences</i> (note 9)	Partial availability - <i>for child witnesses in need of special protection only</i> (note 3 and 5)	Not available (note 5)
Section 28 <i>video recorded cross-examination/ re-examination</i>	Not available (note 6)	Not available (note 6)	Not available (note 6)	Not available (note 6)
Section 29 <i>examination through an intermediary</i>	Partial availability – <i>pilot areas</i> (note 7)	Not applicable	Partial availability – <i>pilot areas</i> (note 7)	Not applicable
Section 30 <i>aids to communication</i>	Full availability (note 1)	<i>Not applicable</i>	Full availability (note 8)	<i>Not applicable</i>

Note 1: - full availability for these witnesses in these courts since 24/07/02

Note 2: - full availability for these witnesses in these courts since 3/06/04

Note 3: - available for 'child witnesses in need of special protection' (defined by section 21 of the 1999 Act) only since 24/07/02

Note 4: - available since 1/09/04 in West London magistrates' court and full availability across magistrates' courts from 3/10/05

Note 5: - no decision on the extension of video-recorded evidence in chief to vulnerable and intimidated witnesses in the magistrates' courts will be taken until we assess the impact of the extension to adult complainants in sex offence cases in the Crown Court

Note 6: - we are currently reviewing the workability of this measure in the context of a review of child evidence.

Note 7: - intermediaries are being piloted in preparation for national roll out (planned 2006/07) - Merseyside pilot went live 23/2/04, Thames Valley 2/10/04, West Midlands 1/11/04 (from 13/9/04 in Black Country area), Norfolk 1/02/05, S Wales 1/02/05 (Cardiff Crown Court and related magistrates courts in S Wales), Devon and Cornwall 20/6/05 (Plymouth Crown and magistrates' court), Leicestershire 01/04/07 (Leicester Crown Court and related magistrates' courts) and Derbyshire 30/04/07 (Derby Crown Court and related magistrates' courts).

Note 8: - available in Merseyside since 23/02/04; full availability across magistrates courts since 3/06/04

Note 9: - available in England and Wales for complainants in sexual offence cases tried in the Crown Court for investigations commencing on or after 01/09/07 – see MoJ circular 25/06/2007