

Statutory Document No. 2010/1023



*High Court Act 1991 and  
Criminal Justice, Police and Courts Act 2007*

## **CRIMINAL JURISDICTION (EVIDENCE BY LIVE LINK OR VIDEO RECORDING) RULES 2010<sup>1</sup>**

*Laid before Tynwald: 18 January 2011*  
*Coming into Operation: 1 February 2011*

The Deemsters make these Rules under section 25 of the High Court Act 1991<sup>1</sup>, as extended by section 57 of the Criminal Jurisdiction Act 1993<sup>2</sup> and section 35 of the Criminal Justice, Police and Courts Act 2007<sup>3</sup>.

### **1 Title and commencement**

- (1) The title of these Rules is the Criminal Jurisdiction (Evidence by Live Link or Video Recording) Rules 2010.
- (2) These Rules come into operation on 1 February 2011.

### **2 Interpretation**

In these Rules —

“the Act” means the Criminal Justice, Police and Courts Act 2007;

“court” means a Court of General Gaol Delivery;

“section 30 direction” means a direction under section 30 of the Act that a witness may give evidence by live link;

“section 36 direction” means a direction under section 36(1)(f) of the Act that a video recording should be admitted as evidence in chief of a witness.

### **EVIDENCE BY LIVE LINK**

### **3 Application for section 30 direction**

- (1) An application for a section 30 direction must be made by giving notice in writing to the Chief Registrar, which must include —

<sup>1</sup> 1991 c.12

<sup>2</sup> 1993 c.9

<sup>3</sup> 2007 c.3

- (a) the name of the applicant;
  - (b) the name of the defendant (if not the applicant);
  - (c) a summary of the charges against the defendant as set out in the information;
  - (d) the name of the witness, if (and only if) —
    - (i) the application is made by or on behalf of the prosecutor, or
    - (ii) disclosure is required by section 7 of the Evidence Act 1983 (disclosure of alibi);
  - (e) the nature of the evidence to be given by the witness (eg. expert evidence as to handwriting, evidence as to the defendant's character, evidence in support of an alibi, or as the case may be);
  - (f) 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
  - (g) the grounds for the application, including details of the matters specified in section 30(6) of the Act and any other relevant circumstances.
- (2) An application for a section 30 direction must be made not less than 21 days before the date of the sitting of the court at which the evidence is to be given.
- (3) A copy of the notice under paragraph (1) must be sent by the applicant to every other party to the proceedings.
- (4) 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.
- (5) An application for a section 30 direction —
- (a) if unopposed, may be determined by the court in chambers with or without a hearing; and
  - (b) if opposed, shall be determined by the court in chambers at a hearing.
- (6) 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.
- (7) The Chief Registrar must notify all the parties of the decision of the court on the application and, if the application has been refused in chambers, of the time and place at which the reasons for refusing the application will be stated in open court.

#### **4 Restriction on further applications**

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).

#### **5 Application for rescission of section 30 direction**

- (1) 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 —
  - (a) the name of the applicant;
  - (b) particulars of the section 30 direction sufficient to identify it; and
  - (c) the grounds for the application, including details of the material change of circumstances justifying the rescission.
- (2) An application under paragraph (1) must be made not less than 14 days before the date of the sitting of the court at which the evidence is to be given.
- (3) A copy of the notice under paragraph (1) must be sent by the applicant to every other party to the proceedings.
- (4) A party who opposes an application under paragraph (1) 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.
- (5) An application under paragraph (1) —
  - (a) if unopposed, may be determined by the court in chambers with or without a hearing; and
  - (b) if opposed, shall be determined by the court in chambers at a hearing.
- (6) 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.
- (7) The Chief Registrar must notify all the parties of the decision of the court on the application and, if the application was determined in chambers, of the time and place at which the reasons for the decision will be stated in open court.

#### **6 Witnesses under 17**

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.

## VIDEO RECORDINGS

### 7 Application for section 36 direction

- (1) 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 of the defendant (if not the applicant);
  - (c) a summary of the charges against the accused as set out in the information;
  - (d) the name and date of birth of the witness;
  - (e) the date on which the video recording was made;
  - (f) a statement complying with paragraph (6) of the circumstances in which the video recording was made;
  - (g) the date on which the video recording was disclosed to the other party or parties; and
  - (h) a statement that the applicant believes that the witness is willing and able to attend the trial for cross-examination.
- (2) Where it is proposed to tender part only of a video recording of an account made by the witness —
  - (a) the notice under paragraph (1) must specify that part; and
  - (b) the statement under paragraph (1)(f) must relate to the circumstances in which the entire recording was made.
- (3) The application must be accompanied by the entire video recording.
- (4) The application must be made not less than 21 days before the date of the sitting of the court at which the evidence is to be given.
- (5) A copy of —
  - (a) the notice under paragraph (1); and
  - (b) the entire video recording,must be sent by the applicant to every other party to the proceedings.
- (6) The statement under paragraph (1)(f) 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 and by whom the copy was made.
- (7) A party who receives a notice under paragraph (1) 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.
- (8) After the expiry of the period referred to in paragraph (7), the court shall decide whether the application should be dealt with at a hearing in chambers or without a hearing, and the Chief Registrar must notify the parties of the time and place of any hearing.
- (9) The application shall be dealt with at a hearing in chambers where any party notifies the Chief Registrar that he objects to the admission of the whole or any part of the video recording.
- (10) The Chief Registrar must notify all the parties of the 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**

## ENDNOTES

### Table of Endnote References

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<sup>1</sup> The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.