

No. 110B

THE EVIDENCE (SPECIAL MEASURES) ACT**THE EVIDENCE (SPECIAL MEASURES (VIDEO RECORDED EVIDENCE)
(CRIMINAL PROCEEDINGS) REGULATIONS, 2015**

In exercise of the powers conferred upon the Minister by section 12(1) of the Evidence (Special Measures) Act, and of every other power hereunto enabling, the following Regulations are hereby made:—

PART I—Preliminary

Citation. 1. These Regulations may be cited as the Evidence (Special Measures) (Video Recorded Evidence) (Criminal Proceedings) Regulations, 2015.
Interpretation.

Interpretation. 2. In these Regulations—

“Constabulary Force” means—

- (a) the Jamaica Constabulary Force; or
- (b) the Rural Police appointed under the *Constables (District) Act*;

“guardian” includes the legal guardian or other person in custody of a witness who has a mental disorder within the meaning of the *Mental Health Act*;

“master copy” means one of the audio visual recording media used to record the interview of a witness and which is recorded simultaneously with other similar recording media in the presence of the witness;

“parent” includes the birth parent, putative, foster or adoptive parent, legal guardian or other person having the care or custody of a child witness;

“recording medium” includes any removable physical audio recording medium; such as a magnetic tape, optical disc or solid state memory, which can be played and copied;

“working copy” means an audio visual recording media, other than the master copy, used to record the interview of a witness and which is recorded simultaneously with other similar recording media in the presence of the witness, or after the making of the master copy is complete.

Application. 3. Pursuant to section 3 of the Act, these Regulations shall apply to the video recording of the interview of a witness, other than an accused, in criminal proceedings where it is intended that the video recording produced therefrom is to be offered as evidence in the criminal proceedings.

Procedures preliminary to conducting video recorded interview. 4.—(1) Where the witness to be interviewed is a child witness or a person who has a mental disorder within the meaning of the *Mental Health Act*, the interviewing officer shall, before the interview is conducted—

(a) explain to the parent or guardian of the witness the purpose for which the interview is to be conducted and recorded; and

(b) provide the parent or guardian with a confirmation form, as set out in Form 1 of the Schedule, and request that the parent or guardian affix his signature to the form confirming that—

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(i) the purpose of and the process involved in the video recording of the interview have been explained to him; and

(ii) it is intended that the video record be used as the evidence of the witness at the trial.

(2) Subject to paragraph (3), the failure or refusal by the parent or guardian to affix his signature to a confirmation form shall not preclude—

(a) the interviewing officer from conducting the interview;

(b) the production of a video record of the interview; or

(c) the use of the video record as the evidence of the witness.

(3) Where the parent or guardian does not sign the confirmation form, the interviewing officer shall indicate on the form the reason for the parent or guardian refusing or failing to sign.

PART II—*The Interview*

Interviews to be conducted by interviewing officer.

5. The interview of a witness shall be conducted by an interviewing officer in an interview room equipped for the purpose, or any other facility which is designated by the Commissioner of Police for that purpose, subject to the satisfaction of the Commissioner of Police that the provisions of the Act have been complied with.

Persons who shall be present at video recording of the interview of the witness.

6.—(1) For the purposes of these Regulations, the following persons shall be present at the video recording of the interview of a witness—

- (a) subject to paragraph (2), the interviewing officer, who shall be a member of a Constabulary Force and shall be specially trained to conduct video recorded interviews of witnesses, including vulnerable witnesses;
- (b) the witness;
- (c) the person operating the equipment to be used to conduct the video recording;
- (d) where necessary any one or more of the following—
 - (i) the investigating officer in the matter in relation to which the interview is to be conducted;
 - (ii) an intermediary, who shall be, available—
 - (A) to assist a witness who may have communication difficulties during the interview process, and to explain questions or answers without changing the substance in relation thereto; and
 - (B) to advise the interviewing officer, on the manner in which questions may be put to the witness, having regard to the age and mental capacity of the witness;
 - (iii) an interview supporter, who shall be available during an interview to provide emotional support to the witness, including making a request that a break be taken in the interview;
 - (iv) an interpreter;

(2) The investigating officer in a matter in relation to which an interview shall be conducted shall not be the interviewing officer in the same or a related proceedings.

Persons who shall be in the interview room during video recording of an interview.

7. During the conducting and video recording of an interview of a witness, the following persons shall be present in the interview room, to the exclusion of all other persons—

- (a) the interviewing officer;
- (b) the witness who is being interviewed; and

(c) where necessary one of both of the following—

- (i) an interpreter;
- (ii) an intermediary,

however, where the witness being interviewed is a child witness or a person who has a mental disorder within the meaning of the *Mental Health Act*, an intermediary shall be present.

Person to be present in room in close proximity to interview room during the video recording of an interview.

8.—(1) Subject to paragraph (2), the following persons shall be present in a room in close proximity to the interview room during the conducting and video recording of the interview of a witness—

- (a) the person who is to operate the equipment to be used to conduct the video recording;
- (b) the investigating officer; and
- (c) where necessary, an interview supporter.

(2) During an interview, the categories of persons specified in paragraph (1) shall be present in the room to the exclusion of all other persons.

Commencement of video recording of interview of witness.

9.—(1) The consent to the video recording of an interview of a witness shall be voluntarily given by the witness.

(2) The camera in the interview room shall be placed in such a manner so as to ensure that there is maximum coverage of the room, and all persons present in the interview room during the recording of the interview shall be visible at all times on the video record.

(3) The recording medium for the interview shall be new and previously unused.

(4) Where the witness has indicated his readiness to be interviewed, the interviewing officer shall instruct the person operating the equipment used to conduct the video recording to—

- (a) remove the recording medium from the manufacturer's sealed packaging in the presence of the witness;
- (b) load the recording equipment; and
- (c) set it to record.

Requirements
for video
recording.

10. Pursuant to regulation 9, the following additional requirements shall be satisfied in relation to a video record that has been made in accordance with the provisions of these Regulations—

- (a) at the commencement of the recording of the interview, each person in the interview room shall identify himself so that his identity may be recorded;
- (b) the interviewing officer shall state the date and time at which the interview commences so that the date and time may be recorded;
- (c) where there is an interpreter present, the interpreter shall be seen and heard on the video record making a verbal declaration that he will accurately and completely translate the words of the witness and the interviewing officer; and
- (d) the video record shall show that there is an analogue clock clearly visible to everyone in the interview room except the witness being interviewed.

Breaks in
interview.

11.—(1) Subject to paragraph (2), during an interview the interviewing officer may direct that a break be taken.

(2) Where the interviewing officer directs that a break shall be taken in the interview, he shall indicate on the recording medium—

- (a) that a break shall be taken;
- (b) the estimated duration of the break to be taken; and
- (c) the reason for which the break shall be taken.

(3) Where the break being taken is for a short duration and the interviewing officer and the witness do not leave the interview room, the recording equipment shall not be turned off, and when the recording of the interview recommences, it shall continue on the same recording medium, and the date and time at which the recording recommences shall be recorded and the interviewing officer shall confirm that this is a continuation of the interview of the witness that was being recorded at the time of the break.

(4) Where the break is for more than thirty minutes and the provisions of paragraph (2) have been complied with, the interviewing officer shall turn off the recording equipment, but the recording medium shall not be removed.

(5) Pursuant to paragraph (4), where the recording is recommenced it shall continue on the same recording medium and the date and time at which the recording recommences shall be recorded and the

interviewing officer shall confirm that it is a continuation of the statement of the witness that was being recorded at the time of the break.

(6) Where the interviewing officer decides to conclude the interview prematurely and it is estimated that the interview will continue at another time, being in excess of twelve hours from the time of conclusion, the fact that the video recording is concluding prematurely, the reasons for it and the time shall be recorded on the recording medium, and the recording equipment shall be turned off and the recording medium shall be removed.

(7) Where pursuant to paragraph (6), the recording medium is removed, the procedure for conclusion of a video recording set out in regulation 14 and 15(1), (2), (3), (4) and (5), shall be followed and where the recording is recommenced, the recording shall continue on a new recording medium and the interviewing officer shall, in addition to complying with regulation 10—

- (a) ensure that the interview recommences, as close as possible to the point at which it was prematurely concluded; and
- (b) at the beginning of the new video recording, state—
 - (i) that the video recording is a new recording of an interview that started on another recording medium;
 - (ii) the reason for the premature conclusion of the previous session of the interview;
 - (iii) the date and time at which the recording of the earlier video record began; and
 - (iv) the time at which the recording of the earlier video record ended.

Changing the
recording
media.

12.—(1) In instances where the recording medium is not of sufficient capacity to record the entire interview of a witness, further recording media shall be used.

(2) Where under paragraph (1), the recording medium is changed, the recording medium shall be removed from the recording equipment and regulations 15(1) and 17 shall apply with appropriate modifications as the circumstances may reasonably require.

(3) A person operating the recording equipment shall inform the interviewing officer when the recording medium only has a short time left to record.

(4) Where, pursuant to subsection (3), the person operating the recording equipment indicates to the interviewing officer that the recording

medium has only a short time left to record, the interviewing officer shall indicate on the recording that—

- (a) the recording medium is coming to an end;
- (b) he is completing this part of the video recording; and
- (c) the video recording will continue on a new recording medium.

(5) The interviewing officer shall instruct the person operating the recording equipment to remove the recording medium from the recording equipment and insert a new recording medium which has been removed from the manufacturer's sealed packaging in the presence of the witness, and the recording equipment shall then be set to record.

Failure of
recording
equipment.

13.—(1) If there is a failure of the recording equipment which can be rectified immediately, the procedures set out in regulation 11 shall be followed, with appropriate modifications as the circumstances may reasonably require.

(2) When the recording is resumed, the interviewing officer shall—

- (a) record and explain on the video recording—
 - (i) the reason for the break in recording; and
 - (ii) the date and time at which the recording of the earlier video recording began and the time at which it ended; and
- (b) ensure that the video recording is recommenced as close as possible to the time of the failure of the recording equipment.

Conclusion of
video
recording.

14.—(1) After the conclusion of the video recording, the witness shall be offered the opportunity to review his recorded interview.

(2) At the conclusion of the recording the time shall be recorded and the recording equipment shall be switched off.

PART III—*Handling of Video Record*

Procedure for
securing
storage of
video record.

15.—(1) The recording media shall be removed from the recording equipment and labelled as the master copy, and two additional copies, hereinafter referred to as the “working copies”, shall be made and labelled in the presence of witness.

(2) The interviewing officer shall ensure that there shall be three video records made of the interview.

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(3) Pursuant to paragraph (2), the video records shall be—

- (a) a master copy; and
- (b) two working copies of the master copy.

(4) The master copy of a video record shall be—

- (a) sealed in an envelope with a certificate in the form set out as Form II in the Schedule; and
- (b) placed in the safe custody of the Jamaica Constabulary Force.

(5) The working copies shall be—

- (a) identified as the working copies by a certificate in the form set out as Form II in the Schedule; and
- (b) placed in the custody of the Jamaica Constabulary Force.

(6) The Jamaica Constabulary Force shall keep, in the manner approved by the Commissioner of Police, a record of—

- (b) the date on which the master copy and the working copies of the video record are placed in the custody of the Jamaica Constabulary Force;
- (b) the name, badge number and rank of the member of the Jamaica Constabulary Force who received the master copy and the working copies of the video record; and
- (c) the particulars of any person who has been granted access to or custody of the master copy and the working copies from that date and the reasons therefor.

(7) A record of every person who viewed, or had custody of, the working copy shall be kept with it.

(8) The record under paragraph (7) shall include—

- (a) the name, occupation and signature of the person who viewed, or had custody of, the working copy; and
- (b) the date on which that person viewed the working copy or, as the case may require, the period during which the person had custody of it.

Overall
responsibility
for securing
storage of video
records.

16. The Commissioner of Police has responsibility to oversee the equipping of police stations across Jamaica for the secure storage of video records of interviews conducted pursuant to these Regulations.

Distribution of
working copy
to prosecu-
tion.

17. A working copy of the video record shall be given to the prosecution where—

- (a) a charge is brought against a person accused of committing the offence to which the interview on the video record relates; and
- (b) it is decided that the accused shall be prosecuted.

Defence
counsel to
receive a
working copy
of video
recorder.

18.—(1) Where—

- (a) an accused has retained defence counsel or defence counsel has been appointed by the court; and
- (b) there is a video record of the interview of the witness in the criminal proceedings for which defence counsel has been retained or appointed,

the prosecution shall issue a request in writing to the Crime Officer of the Division in charge of the police station at which the working copy of the video record was stored, for another working copy of the video record to be issued to the prosecution for service on the defence counsel.

(2) Pursuant to paragraph (1), the prosecution shall serve the working copy—

- (a) in the case of a preliminary inquiry, no less than seven days before the date on which the video record shall be submitted in evidence at the preliminary inquiry;
- (b) in the case where the accused is to be tried summarily or on indictment, within fourteen days after the accused has pleaded not guilty.

(3) Immediately upon receipt of a working copy of the video record, the defence counsel shall complete, in duplicate, a form as set out as Form III of the Schedule as proof of receipt of a working copy from the prosecution.

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(4) Where, in accordance with paragraph (3), defence counsel completes the Form as required, both the prosecution and defence counsel shall keep a copy of the completed form.

Working
copies where
multiple
defence
counsel for
multiple
accused.

19.—(1) Where in a single proceeding—

- (a) there is more than one accused; and
- (b) each accused is represented by a different defence counsel in the same proceeding,

the prosecution shall, subject to paragraph (2), issue a request in writing to the Crime Officer of the Division in charge of the police station at

which the working copy of the video record was stored requesting that additional working copies of the video record be issued to the prosecution for service on each defence counsel.

(2) A request issued under paragraph (1) shall indicate that for the particular proceeding—

- (a) there is more than one accused person;
- (b) each accused person is represented by defence counsel who is different from defence counsel representing the other accused person in the same proceeding;
- (c) the prosecution is requesting that the Crime Officer of the Division referred to in paragraph (1), issue a directive that additional working copies of the video record commensurate with the total number of defence counsel (less defence counsel who received one of the original working copies from the prosecution in the proceeding) be made available to the prosecution for service on each defence counsel.

(3) Where the prosecution receives additional working copies of the video record under this regulation, the prosecution shall serve a working copy on each defence counsel and the procedure set out in regulation 18(2) to (4) shall apply.

Restrictions
on accessi-
bility distribution
demonstration
and viewing of
working
copies.

20.—(1) Subject to paragraph (2), where working copies of a video record have been given to the prosecution and defence counsel, no person other than such prosecution or defence counsel shall be given access to the working copies of the video record.

(2) Notwithstanding paragraph (1), a member of a Constabulary Force who is authorized under these Regulations to gain access to working copies of a video record may make a working copy of the video record available for viewing—

- (a) by an attorney-at-law, where the police require the assistance of that attorney-at-law to determine—
 - (i) what charges may be laid in relation to the statement made by a witness during the course of the interview that is the subject of the video record; or
 - (ii) whether, in relation to the matter to which the video record is connected, court proceedings may be instituted;

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- (b) subject to paragraph (3), by a person—
 - (i) who is suspected of having committed an offence to which the video record relates;
 - (ii) who has been charged with an offence in relation to which the video record may be used in evidence; or
 - (iii) against whom an information has been filed or an indictment has been preferred in relation to an offence, in relation to which the video record may be used in evidence;
 - (c) by the witness whose interview is recorded on the video record, for the purpose of refreshing his memory before giving evidence in court or being cross-examined in court;
 - (d) for the purpose of making a transcript of the working copy, by a member of a Constabulary Force;
 - (e) by an attorney-at-law representing the witness or the Crown in the matter to which the video record relates;
 - (f) by a Judge or Resident Magistrate, to determine whether the video record is admissible in a criminal proceeding or whether it contravenes any enactment or rule of law; or
 - (g) to enable the Commissioner of Police or any other member of a Constabulary Force to discharge his duties under any other enactment.

(3) Whether or not an accused person has legal representation, the accused shall not be issued with a copy of a video record.

(4) Where an accused person is charged with a criminal offence in relation to which there is a video record of a witness, the accused shall be—

- (a) permitted, in the presence of a member of a Constabulary Force, to view the video record; and
- (b) issued with a transcript of the video record.

(5) Each prosecution and defence counsel who has been supplied with a working copy of a video record shall keep it in safe custody.

(6) The prosecution and defence counsel may only use a working copy for the following purposes—

- (a) preparing the case in the criminal proceedings to which the video record relates;

- (b) showing the video record to any expert from which advice is being sought in connection with the criminal proceeding;
- (c) in the case of defence counsel, to give advice to the person who is being represented in the criminal proceeding to which the video record relates.

(7) A person to whom the prosecution or defence counsel is authorized to show the working copy under paragraph (6) shall view the working copy only in the presence of the prosecution or defence counsel, as the case may be.

Power to copy
or edit a video
record.

21.—(1) Subject to regulation 19, a person shall not make a copy of, or edit, a video record without obtaining the permission of the court to do so.

(2) Subject to paragraph (1), only a member of a Constabulary Force, who is authorised by the Commissioner of Police, may make a copy of the video record or edit a working copy of the video record.

PART IV—*Transcript of Video Record*

Prosecution to
serve
transcript on
accused or
attorney-at-
law.

22.—(1) Subject to paragraph (3), the prosecution shall serve on an accused, who is not represented by an attorney-at-law, a transcript of the video record of the interview of a witness.

(2) Subject to paragraph (3), where an accused is represented by an attorney-at-law, the prosecution shall serve on the attorney-at-law representing the accused, a transcript of the video record of the interview of a witness.

(3) The prosecution shall serve the transcript—

- (a) in the case of a preliminary enquiry, no less than seven days before the date on which the video record shall be submitted in evidence at the preliminary enquiry;
- (b) in the case where the accused is to be tried summarily, or on indictment, within fourteen days before the date of the trial.

(4) A copy of the transcript shall be kept with the master copy of the video record.

Member of
Constabulary
Force to
prepare
transcript.

23.—(1) Every transcript of a video record shall be prepared by a member of a Constabulary Force other than the investigating officer in the criminal proceedings in which the accused is involved.

(2) The transcript of a video record prepared under these Regulations shall be deemed to be the written statement of the witness whose interview was recorded.

Certification of transcript.

24. A transcript prepared under these Regulations shall be valid only upon certification of its validity as an accurate transcript of the video record by the investigating officer in the matter to which the transcript relates.

*PART V—Retention, Return, and Destruction of
Video Records*

Court to retain video record until proceedings complete then destroy record.

25.—(1) Where a video record is admitted into evidence into in criminal proceedings, the video record shall be retained by the court until the completion of the proceedings.

(2) Upon the completion of the proceedings in which a video record was admitted into evidence, the Court Administrator or the Registrar of the Court, as the case may be, shall, as soon as reasonably practicable after the completion of the proceedings—

- (a) destroy every working copy of the video record in the possession of the Court pertaining to the completed proceedings; and
- (b) return to the Crime Officer of the Division in charge of the police station at which the video record was made, the master copy of the video record or, as the case may be, the video record that was admitted into evidence.

(3) Where no criminal proceedings have been brought against an accused person, neither the master copy nor the working copy of the video record shall be destroyed.

Defence counsel to return video record.

26. Every defence counsel in possession of a video record shall return the video record to the prosecution as soon as practicable where—

- (a) defence counsel ceases to represent the accused person in the matter to which the video record relates; or
- (b) the criminal proceedings to which the video record relates have either been determined or discontinued.

Prosecution to return video record.

27. Where criminal proceedings to which any video record in the possession of the prosecution relates have been either determined or discontinued, the prosecution shall return forthwith to the Crime Officer of the Division in charge of the police station at which the video record was stored every video record in his possession that pertains to the proceedings, including the video record returned by defence counsel in accordance with regulation 26.

Police to des-
troy returned
working
copies of
video record.

28. Where a working copy of a video record is returned under regulations 26 and 27, the Commissioner of Police shall cause the video recording to be destroyed forthwith.

Master copy
of video re-
cord not to be
destroyed.

29.—(1) No master copy of a video record created under these Regulations shall be destroyed.

(2) Every master copy returned to a Constabulary Force shall be stored for safekeeping in such manner as may be determined by the Commissioner of Police.

SCHEDULE

(Regulation 4)

FORM I

THE EVIDENCE (SPECIAL MEASURES) ACT

CONFIRMATION FORM

THE EVIDENCE (SPECIAL MEASURES) (VIDEO RECORDED EVIDENCE)

(CRIMINAL PROCEEDINGS) REGULATIONS, 2015

(Under Regulation 4)

1. Name of witness _____

Date of Birth of witness _____

(State whether witness has a mental disorder within the meaning of the *Mental Health Act*) _____

2. I/We, _____ am/are the person/
(name of parent of witness)
the persons who has/have the parental/guardianship responsibility for

(name of witness)

I/We, confirm the following—

- (a) that the purpose of and process involved in the video recording of the interview of _____ (name of witness) have been explained to me/us by _____;
(name and rank of member of Constabulary Force)
- (b) I/We, am/are aware that it is intended that the video record be used as the evidence of _____ (name of witness) at a trial arising from the evidence provided in the video recorded interview; and
- (c) I/We, am/are aware that failure to affix my/our/signature(s) to this Form shall not preclude—
- (i) _____ (name of witness) from being interviewed;
 - (ii) the production of a video record of the interview; or
 - (iii) the use of the video record as the evidence of the witness.

*Signature of parent(s) of witness*_____
*Signature of Interviewing Officer*_____
Date

SCHEDULE, *contd.*

(This part is to be completed only where parent(s) refuses/refuse to affix his/her/their signature to the form).

I _____ hereby confirm
(name of interviewing officer)
that all matters referred to under paragraph (2) of this Form have been explained
to _____ and he/she/they have refused
his/her/their
(name of parent/parents)
(name of guardian/guardians)

to affix signature(s) above for the following reasons—

List reasons

Signature of Interviewing Officer

Date

FORM II

(Regulation 15)

THE EVIDENCE (SPECIAL MEASURES) ACT

Certificate for Video Record of Interview

1. Type of copy _____ (Specify whether master copy or working copy)
2. Type of recording _____ (Specify whether videotape, DVD or other)
3. Police Reference number of video record _____
4. Court File number (if applicable) _____
5. Date of interview _____
6. Name of witness interviewed _____
7. Date of birth of witness interviewed _____
8. Name and rank of Interviewing Officer _____
9. Name and designation of other persons present _____
10. Reasons for interview _____
11. Location where interview was recorded _____
12. Time interview commenced _____
13. Time interview concluded _____
14. Duration of interview _____
15. Number of recording media used and number in series of recording media _____
16. Number of breaks in interview _____
17. Reasons for breaks _____
18. Reasons for premature conclusion (if applicable) _____
- Other _____

I certify that the contents of this certificate are correct.

Date _____

Signed _____
Signature of Interviewing Officer

FORM III

(Regulation 18)

THE EVIDENCE (SPECIAL MEASURES) ACT

Certificate of Receipt

(To be completed out in duplicate)

Pursuant to Regulation 18 of the Evidence (Special Measures) (Video Recorded Evidence) (Criminal Proceedings) Regulations, 2015

Name of Defence Counsel _____

This is to certify that I have been provided with video record no. () of an interview between _____ and _____
(name of interview officer) (name of witness)

A copy of the certificate relating to the video record of the interview is herewith attached.

I/We undertake that whilst the recording is in my/our possession I/we shall—

- (a) not make or permit any other person to make a copy of the recording;
- (b) not release the recording to; _____
(name of accused person)
- (c) not make or permit any disclosure of the recording or its contents to any person except when in my/our opinion it is strictly necessary in the interests of the witness and/or the interests of justice;
- (d) ensure that the recording is always kept in a locked, secure container and not left unattended in vehicles or otherwise unprotected;
- (e) return the recording to you when I am/we are no longer professionally involved in the matter; and
- (f) record details of the name of any person allowed access to a recording together with details of the source of the authorisation granted to him or her.

Date _____

Date _____

Signature of Defence Counsel _____

Signature of member of the prosecution _____

Witness _____

Dated this 2nd day of July, 2015.

MARK GOLDING,
Minister of Justice.