



# Evidence Regulations 2007

Anand Satyanand, Governor-General

## Order in Council

At Wellington this 23rd day of July 2007

Present:

His Excellency the Governor-General in Council

Pursuant to sections 200 and 201 of the Evidence Act 2006 and, in relation to preliminary hearings, pursuant also to section 212 of the Summary Proceedings Act 1957, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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## Regulations

### 1 Title

These regulations are the Evidence Regulations 2007.

### 2 Commencement

These regulations come into force on 1 August 2007.

### 3 Interpretation

In these regulations, unless the context otherwise requires,—

**Act** means the Evidence Act 2006

**authorised advisor** means—

- (a) the Secretary for Justice; or
- (b) a person engaged by the Minister of Justice or the Secretary for Justice to give advice about a review application

**Commissioner** means the Commissioner of Police

**interview** means an interview with a complainant whose evidence is being video recorded

**lawyer's copy**, in relation to a video record, has the meaning given to it by regulation 30

**master copy**, in relation to a video record, has the meaning given to it by regulation 15

**responsible department** means the department that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989

**review application** means—

- (a) an application for the exercise of the prerogative of mercy; or
- (b) an application under section 406 of the Crimes Act 1961

**working copy**, in relation to a video record, has the meaning given to it by regulation 16.

## Part 1

### Video record evidence in criminal proceeding

#### Subpart 1—Recording video evidence

#### 4 Application of subpart

This subpart applies to the video recording of a complainant's evidence if it is intended that the video record may be offered later as evidence in a criminal proceeding.

#### *Who may be present at video recording of interview*

#### 5 Only certain persons may be present during interview

The following persons are the only persons who may be present at the video recording of an interview:

- (a) the person facilitating the interview (the **interviewer**);
- (b) the complainant;
- (c) any person needed to operate the recording equipment;
- (d) if regulation 6 applies, a person who is present to support the complainant;
- (e) if regulation 7 applies, an interpreter.

Compare: SR 1990/164 r 4(1)

#### 6 Person to support complainant may be present

- (1) A person may be present at an interview to support a complainant if the interviewer considers that—
  - (a) it is in the interests of the complainant; and
  - (b) the person is an appropriate person to support the complainant.
- (2) A person present at an interview under subclause (1) must not take part in the interview.

Compare: SR 1990/164 r 4(2)

## **7 Interpreter may be present**

An interpreter may be present at an interview if—

- (a) the complainant does not have sufficient proficiency in the English language to understand the interview if conducted in English; or
- (b) the complainant has a communication disability.

Compare: SR 1990/164 r 4(3)

### *What must be on video record*

## **8 What must be on video record**

A video record of an interview must show the following:

- (a) the interviewer stating the date and time at which the interview starts; and
- (b) each person present identifying himself or herself; and
- (c) subject to any contrary direction of a Judge, in the case of a complainant who is of or over the age of 12 years, that person taking an oath or making an affirmation; and
- (d) in the case of a complainant who is under the age of 12 years,—
  - (i) the interviewer informing the complainant of the importance of telling the truth and not telling lies; and
  - (ii) subject to any contrary direction by a Judge, the complainant making a promise to tell the truth (in any form, provided the overall effect is a promise to tell the truth); and
- (e) any interpreter present taking an oath or making an affirmation; and
- (f) the entire interview; and
- (g) a clearly visible analogue clock, with a second hand, correctly recording the time; and
- (h) the interviewer stating the time at which the interview finishes; and
- (i) if any of regulations 9 to 12 apply, the matters required by those regulations.

Compare: SR 1990/164 r 5(1)(a)–(d), (g), (3)

## **9 Additional requirement if break taken**

A video record of an interview must also show the interviewer stating the following matters if the interviewer decides that a break is to be taken during the recording of the interview:

- (a) the fact that a break is being taken; and
- (b) the estimated duration of the break; and
- (c) the reason for taking it.

Compare: SR 1990/164 r 5(1)(e)

#### **10 Additional requirement if premature conclusion**

A video record of an interview must also show the interviewer stating the following matters if the interviewer decides to conclude the interview without asking all the intended questions:

- (a) the fact that the video record is concluding prematurely; and
- (b) the reasons for that.

Compare: SR 1990/164 r 5(1)(f)

#### **11 Additional requirement if person present to support complainant**

A person present at an interview to support a complainant must be clearly visible throughout the video recording of the interview.

Compare: SR 1990/164 r 5(4)

#### **12 Additional requirement if interpreter present**

An interpreter present at an interview must be clearly visible throughout the video recording of the interview.

### *Equipment failure*

#### **13 Equipment failure**

- (1) The following steps are to be taken if any recording equipment (including the video record itself) fails during the video recording of an interview and the failure is not able to be fixed immediately:
  - (a) the video record must be removed from the video recording equipment and dealt with under the following regulations in this Part; and
  - (b) the interview must be recommenced on another video record as soon as practicable.
- (2) A video record of an interview that is recommenced must—

- (a) show the interviewer stating that this is a new video record of an interview that started on another video record but was interrupted by equipment failure; and
- (b) recommence approximately at the point it was interrupted by the equipment failure.

Compare: SR 1990/164 r 6

### *Master copy and working copy*

#### **14 Copies of video record**

- (1) There must be at least 2 video records made of an interview.
- (2) The video records must include—
  - (a) a master copy (the **master copy**); and
  - (b) a single working copy of the master copy (the **working copy**).

Compare: SR 1990/164 r 7(1)

#### **15 Master copy**

A master copy is either—

- (a) a single video record of an interview; or
- (b) if 2 or more video records are made of an interview (for example, if 2 or more video records are made simultaneously in a multi-deck machine or linked machines), 1 of those video records.

Compare: SR 1990/164 r 7(2)(a)

#### **16 Working copy**

- (1) The working copy is,—
  - (a) if regulation 15(a) applies, a copy of the master copy made as soon as practicable after the making of the master copy is complete; or
  - (b) if regulation 15(b) applies, 1 of the simultaneously made video records.
- (2) If more than 2 video records of an interview are made simultaneously, the record or records that are not the working copy or the master copy—
  - (a) must, subject to paragraph (b), be identified, kept, and dealt with under these regulations as if they were the working copy; but
  - (b) may be treated as if they were a copy of a working copy—



- (i) for the purposes of regulations 21(2)(b), 22(2)(b), and 30(1) (which allow a copy of a working copy to be supplied to certain other persons); and
- (ii) if supplied under those regulations, for the purposes of these regulations generally.

Compare: SR 1990/164 r 7(2)(b)

## **17 How master copy identified and kept**

- (1) A master copy must be—
  - (a) sealed with a certificate in the form set out in the Schedule; and
  - (b) placed in safe custody with the police.
- (2) The police must keep a record of—
  - (a) the date on which the master copy was received into safe custody; and
  - (b) the particulars of—
    - (i) who has dealt with the master copy from that date; and
    - (ii) the reasons for dealing with it.

Compare: SR 1990/164 r 8

## **18 How working copy identified and kept**

- (1) A working copy must be—
  - (a) identified as a working copy by a copy of the certificate in the form set out in the Schedule; and
  - (b) placed in safe custody with the police.
- (2) A record of every person who views, or had custody of, a working copy must be kept with it.
- (3) The record must include—
  - (a) the name and occupation of the person who viewed, or had custody of, the working copy; and
  - (b) the date on which that person viewed it or, as the case requires, the period during which the person had custody of it.
- (4) Nothing in subclause (1)(b) prevents the police from—
  - (a) supplying the working copy under subpart 2; or
  - (b) making or supplying a copy of a working copy under subpart 2 or 3.

Compare: SR 1990/164 rr 9, 11(1)

## Subpart 2—Restrictions on showing, viewing, copying, and supplying working copy and master copy

### 19 Application of subpart

This subpart applies to a video record that has been made of a complainant's evidence under subpart 1.

### 20 Limited purposes for which police may show working copy

The police may only show a working copy for the following purposes:

- (a) to seek advice from a lawyer or any other person to determine whether—
  - (i) any, and if so what, charges ought to be laid; or
  - (ii) any care or protection proceeding ought to be instituted:
- (b) to allow any of the following persons to know the case against them:
  - (i) a person suspected of having committed an offence to which the video record relates:
  - (ii) a defendant to any charge laid in relation to which the video record may be used in evidence:
  - (iii) an accused against whom an indictment has been filed in relation to which the video record may be used in evidence:
- (c) to allow any lawyer representing any person referred to in paragraph (b) to view it:
- (d) to allow the complainant to view it:
- (e) for the purpose of making a transcript:
- (f) to allow any lawyer representing the complainant or the Crown to view it:
- (g) to enable any Judge to view it in order to—
  - (i) determine whether it is admissible in a proceeding; or
  - (ii) comply with any requirement in an enactment or imposed by a rule of law:
- (h) to enable the Commissioner or any other member of the police to discharge his or her duties under an enactment:
- (i) to assist the police in any further investigations of suspected offences that may have been committed by any person referred to in paragraph (b).

Compare: SR 1990/164 r 10

*Request for video record made by responsible department or  
Family Court Judge*

**21 Responsible department may request video record of certain complainants**

- (1) The responsible department may ask the police for a copy of a video record of a child complainant or any other complainant of the kind described in section 185CA(1)(a) of the Summary Proceedings Act 1957 for the following purposes:
  - (a) allowing the complainant to view the video record:
  - (b) enabling the Director-General of the responsible department, or any social worker employed by the responsible department, to discharge his or her duties under an enactment.
- (2) In response to a request made under subclause (1), the police must supply one of the following to the responsible department:
  - (a) the working copy; or
  - (b) a copy of the working copy.
- (3) The responsible department must place the working copy or the copy of the working copy in safe custody.
- (4) This regulation does not give any person authority to make a copy of the working copy or a copy of the copy of the working copy supplied to the responsible department under subclause (2).
- (5) A working copy supplied to the responsible department under subclause (2)(a) must be returned to the police on request.

Compare: SR 1990/164 r 11A

**22 Family Court Judge may request video record of certain complainants**

- (1) A Family Court Judge may ask the police for a copy of a video record of a child complainant or any other complainant of the kind described in section 185CA(1)(a) of the Summary Proceedings Act 1957 (the **child**) for the Family Court for any of the following purposes:
  - (a) allowing parties to a proceeding under the Care of Children Act 2004 or the lawyer for any of those parties to view the video record:
  - (b) assisting a person that the Family Court Judge considers qualified to prepare a cultural, medical, psychiatric, or

- psychological report on the child under section 133 of the Care of Children Act 2004:
- (c) allowing parties to a proceeding under Part 2 of the Children, Young Persons, and Their Families Act 1989 or the lawyer for any of those parties to view the video record:
  - (d) assisting a person to prepare a medical, psychiatric, or psychological report on the child under section 178 of the Children, Young Persons, and Their Families Act 1989.
- (2) In response to a request made under subclause (1), the police must supply one of the following to the Family Court:
    - (a) the working copy; or
    - (b) a copy of the working copy.
  - (3) The Family Court must place the working copy or the copy of the working copy in safe custody.
  - (4) The Family Court may only show the video record if—
    - (a) a Family Court Judge is satisfied that showing it is in the best interests of the child who is the subject of the proceeding under the Care of Children Act 2004 or the care or protection proceeding under the Children, Young Persons, and Their Families Act 1989; and
    - (b) a Family Court Judge authorises in writing the viewing of it by the person or persons concerned; and
    - (c) the viewing takes place within the Family Court premises; and
    - (d) the viewing is supervised by a registrar of the Family Court or by any person nominated by a registrar; and
    - (e) the Family Court Judge is satisfied that showing it is not likely to jeopardise any pending criminal proceeding.
  - (5) This regulation does not give any person authority to make a copy of the working copy or a copy of the copy of the working copy supplied to a Family Court under subclause (2).
  - (6) A working copy supplied to a Family Court under subclause (2)(a) must be returned to the police on request.
  - (7) This regulation does not affect whether or not a video record is admissible as evidence in any proceeding.

Compare: SR 1990/164 r 11B

**23 Transcript to accompany video record supplied to responsible department or Family Court**

- (1) The police must also supply a copy of any existing transcript of a video record if the video record is supplied to—
  - (a) the responsible department under regulation 21; or
  - (b) a Family Court under regulation 22.
- (2) A copy of a transcript supplied to the responsible department or a Family Court under subclause (1) must be placed in safe custody with the working copy or the copy of the working copy to which it relates.

Compare: SR 1990/164 r 11C(1), (2)

**24 Copying or showing transcript limited to certain purposes**

- (1) The responsible department may only copy or arrange for the copying of a transcript in its custody under regulation 23 in relation to a purpose specified in paragraph (a) or (b) of regulation 21(1).
- (2) A Family Court may only copy or arrange for the copying of a transcript in its custody under regulation 23 in relation to a purpose specified in any of paragraphs (a) to (d) of regulation 22(1).
- (3) Despite subclauses (1) and (2), the responsible department or a Family Court may copy or arrange for the copying of a transcript in its custody under regulation 23 if—
  - (a) satisfied that doing so is in the best interests of the child who is the subject of the proceeding under the Care of Children Act 2004 or the care or protection proceeding under the Children, Young Persons, and Their Families Act 1989; and
  - (b) satisfied that doing so is not likely to jeopardise any pending criminal proceeding; and
  - (c) a record is kept of every person to whom a copy of the transcript is given.
- (4) No person may make a copy of a transcript supplied under this regulation other than as provided for in this regulation.
- (5) A copy of any transcript supplied to the responsible department or a Family Court under regulation 23 must, if regulation 21(5) or 22(6) applies, be returned to the police on request along with the working copy to which it relates.

- (6) The responsible department or a Family Court may only show a transcript in its custody under regulation 23 to a person if—
- (a) satisfied that doing so is in the best interests of the child who is the subject of the proceeding under the Care of Children Act 2004 or the care or protection proceeding under the Children, Young Persons, and their Families Act 1989; and
  - (b) satisfied that doing so is not likely to jeopardise any pending criminal proceeding; and
  - (c) a record is kept of every person to whom a copy of the transcript is shown.

Compare: SR 1990/164 r 11C(3)–(7)

### *Request by authorised advisors*

#### **25 Authorised advisor may request copy of video record**

- (1) An authorised advisor who requires a copy or copies of a video record of a complainant for the purpose of giving advice about a review application may ask the registrar of the court responsible for the custody of a master copy under regulation 38 to supply a specified number of copies of it.
- (2) On receiving a request under subclause (1), the registrar must supply the specified number of copies of the master copy requested.

Compare: SR 1990/164 r 13A

#### **26 Conditions of supply of copy of master copy to authorised advisor**

- (1) A copy or copies of a master copy supplied to an authorised advisor under regulation 25 may only be viewed by—
  - (a) the authorised advisor; and
  - (b) any person the authorised advisor considers can help with the giving of advice about the review application.
- (2) An authorised advisor must place every copy of a master copy supplied to that advisor in safe custody.
- (3) An authorised advisor may supply the copy or 1 of the copies of the master copy in his or her custody to another person if the authorised advisor considers that person can help with the giving of advice about the review application.

- (4) An authorised advisor who supplies a copy of a master copy to another person under subclause (3) must take all reasonable steps to ensure that the person to whom it is supplied—
  - (a) places it in safe custody; and
  - (b) prevents any other person from viewing it; and
  - (c) returns it to the authorised advisor as soon as is reasonably practicable.
- (5) This regulation does not give any person authority to make a copy of any copy of the master copy supplied to that person under regulation 25.
- (6) Every copy of a master copy supplied to an authorised advisor under regulation 25 must be returned by the authorised advisor to the registrar who supplied it as soon as is reasonably practicable after the authorised advisor finishes giving advice about the review application or any related matter.

Compare: SR 1990/164 r 13B

## **27 Transcripts to accompany copy of master copy supplied to authorised advisor**

- (1) A registrar of a court who supplies a copy or copies of a master copy to an authorised advisor under regulation 25 must also supply the authorised advisor with the number of copies of the transcript that the authorised advisor requests.
- (2) Subclause (1) only applies if a transcript of the master copy already exists.
- (3) Every copy of a transcript supplied to an authorised advisor under subclause (1) must be placed in safe custody with the copy or copies of the master copy to which it relates.
- (4) An authorised advisor may only copy or arrange for the copying of a transcript in his or her custody in relation to the purpose specified in regulation 25(1).
- (5) An authorised advisor may only copy or arrange for the copying of a transcript under subclause (4) if—
  - (a) satisfied that doing so is not likely to jeopardise any pending criminal proceeding; and
  - (b) a record is kept of every person to whom a copy of the transcript is given.
- (6) No person may make a copy of a transcript supplied under this regulation except as provided for in this regulation.

- (7) If regulation 26(6) applies, every copy of a transcript supplied under subclause (1) and every copy made under subclause (4) must be returned along with the copy or copies of the master copy.
- (8) An authorised advisor may only show another person a copy of a transcript if—
  - (a) satisfied that doing so is not likely to jeopardise any pending criminal proceeding; and
  - (b) a record is kept of every person to whom a copy of the transcript is shown.

Compare: SR 1990/164 r 13C

*Prosecution to give transcript to defence before preliminary hearing*

**28 Prosecutor to give transcript to defence before preliminary hearing or defended summary hearing**

- (1) The prosecutor must ensure a typed transcript of a working copy is given to the defendant or the defendant's lawyer,—
  - (a) if there is to be a preliminary hearing, at least 7 days before the date on which a video record is given in evidence at a preliminary hearing;
  - (b) if the defendant is to be tried summarily, as soon as is reasonably practicable after the defendant has pleaded not guilty.
- (2) The typed transcript is to be prepared by the police.
- (3) The Court may adjourn the hearing to allow further time for the defendant to consider the transcript if satisfied that subclause (1) has not been complied with.

Compare: SR 1990/164 r 13

**Subpart 3—Lawyer's copy**

**29 Application of subpart**

This subpart applies if a copy of a video record of a complainant's evidence to which subpart 2 applies is to be given to a lawyer for a party to a criminal proceeding under section 106(4)(a) of the Act.

**30 Lawyer's copy**

- (1) If this subpart applies, the police must make a copy of the working copy and supply it to the lawyer (the **lawyer's copy**).



- (2) A lawyer's copy must be identified as a lawyer's copy by a copy of the certificate in the form set out in the Schedule.

### **31 Custody of lawyer's copy**

- (1) A lawyer who has a lawyer's copy supplied to him or her under regulation 30(1) must place it in safe custody.
- (2) A lawyer who has a lawyer's copy must return it to the police as soon as practicable after the criminal proceeding to which it relates is finally determined or discontinued.
- (3) Nothing in subclause (2) prevents a lawyer from returning a lawyer's copy to the police at any earlier time.

### **32 Purposes for which lawyer's copy may be used by lawyer**

- (1) A lawyer may only use a lawyer's copy for the following purposes:
  - (a) preparing a case for the person he or she is representing in the criminal proceeding to which the video record relates;
  - (b) showing the video to any expert from which the lawyer wished to seek advice in connection with the criminal proceeding;
  - (c) giving legal advice to the person he or she is representing in the criminal proceeding to which the video record relates.
- (2) A person to whom a lawyer is authorised to show the lawyer's copy under subclause (1) may view the copy only in the presence of the lawyer.

### **33 Prohibition on copying lawyer's copy**

No person may make any copies of a lawyer's copy without the permission of a Judge.

### **34 Restriction on supply of lawyer's copy**

- (1) A lawyer who has a lawyer's copy in his or her custody must not give it to any other person without the permission of a Judge.
- (2) Nothing in subclause (1) prevents—

- (a) the defendant or any expert from viewing a working copy under regulation 20(b) or a lawyer's copy under regulation 32; or
- (b) the lawyer from returning the copy under regulation 31.

Subpart 4—Retention and destruction of master copy, copies of master copy, working copy, copies of working copy, and lawyer's copy

**35 Application of subpart**

This subpart applies to a video record of a complainant's evidence to which subpart 2 or 3 applies.

**36 Meaning of destruction date A and destruction date B**

In this subpart,—

- (a) **destruction date A** means the date that is 10 years after the date on which the criminal proceeding to which a video record relates is finally determined or discontinued; and
- (b) **destruction date B** is the date that is 7 years after the date on which a master copy is made.

*Privacy preserved*

**37 Privacy to be preserved**

Until destruction date A, destruction date B, or the date referred to in regulation 47 (whichever applies) the master copy, working copy, every copy of the master copy and working copy, and every lawyer's copy, must be kept in a way that preserves the privacy of the persons recorded on it.

Compare: SR 1990/164 r 14(8)

*Master copy to be used in criminal proceeding*

**38 Producing and retaining master copy for criminal proceeding**

- (1) The following must be produced at a criminal proceeding if a video record is to be offered as alternative evidence:
  - (a) the master copy; and
  - (b) a typed transcript of the master copy prepared by the police.

- (2) Once given in evidence at a criminal proceeding, the master copy must be retained in the custody of the court until destroyed or erased in accordance with regulation 39.
- (3) Despite subclause (2), a master copy may be removed from court custody for the period necessary to make a copy or copies of it for the purpose of responding to a request under regulation 25 (which relates to a request by an authorised advisor).

Compare: SR 1990/164 r 12

### *Court retention and destruction obligations*

#### **39 Obligations of court to retain and destroy master copy and copy of master copy**

- (1) If a master copy is produced in court, the court must retain custody of it until destruction date A.
- (2) On destruction date A, the court must destroy or erase—
  - (a) the master copy; and
  - (b) all copies of the master copy returned to the registrar under regulation 26(6).
- (3) If a copy of the master copy is returned under regulation 26(6) after destruction date A, the court must promptly destroy or erase it.

Compare: SR 1990/164 r 14(3), (3A), (3B)

### *Police retention and destruction obligations*

#### **40 Obligations of police to retain and destroy master copy**

- (1) The police must retain custody of a master copy until—
  - (a) it is produced in court; or
  - (b) if no proceeding is brought, destruction date B.
- (2) On destruction date B, the police must destroy or erase the master copy.

Compare: SR 1990/164 r 14(2), (3)

#### **41 Obligations of police to retain and destroy working copy and copy of working copy**

- (1) The police must retain custody of the working copy until destruction date B.
- (2) On destruction date B, the police must destroy or erase the working copy.

- (3) On destruction date B, the police must destroy or erase any copy of the working copy in their custody.

Compare: SR 1990/164 r 14(4), (6)(a), (7)(a)

#### **42 Obligations of police to retain and destroy lawyer's copy**

- (1) The police must retain custody of any lawyer's copy returned to them until destruction date B.
- (2) On destruction date B, the police must destroy or erase the lawyer's copy.

#### *Responsible department and Family Court retention and destruction obligations*

#### **43 Obligations of responsible department to retain and destroy working copy**

- (1) This regulation applies if the responsible department has custody of a working copy supplied to it in response to a request made under regulation 21.
- (2) The responsible department must retain custody of the working copy until destruction date B unless it is sooner asked to return the working copy to the police under regulation 21(5).
- (3) If the responsible department retains custody of the working copy on destruction date B, it must destroy or erase it on that date.

Compare: SR 1990/164 r 14(5), (6)(b)

#### **44 Obligation of responsible department to retain and destroy copy of working copy**

- (1) This regulation applies if the responsible department has custody of a copy of a working copy supplied to it in response to a request under regulation 21.
- (2) The responsible department must retain custody of the copy of the working copy until destruction date B.
- (3) On destruction date B, the responsible department must destroy or erase the copy of the working copy.

Compare: SR 1990/164 r 14(5), (7)(b)

**45 Obligations of Family Court to retain and destroy working copy**

- (1) This regulation applies if a Family Court has custody of a working copy supplied to it in response to a request made by a Family Court Judge under regulation 22.
- (2) The Family Court must retain custody of the working copy until destruction date B unless it is sooner asked to return the working copy to the police under regulation 22(6).
- (3) If the Family Court retains custody of the working copy on destruction date B, it must destroy or erase it on that date.

Compare: SR 1990/164 r 14(5A),(6)(c)

**46 Obligations of Family Court to retain and destroy copy of working copy**

- (1) This regulation applies if a Family Court has custody of a copy of a working copy supplied to it in response to a request made by a Family Court Judge under regulation 22.
- (2) The Family Court must retain custody of the copy of the working copy until destruction date B.
- (3) On destruction date B, the Family Court must destroy or erase the copy of the working copy.

Compare: SR 1990/164 r 14(5A), (7)(c)

*Exception***47 Destruction before destruction date**

- (1) Nothing in this Part prevents the destruction of the master copy, any copy of the master copy, the working copy, any copy of the working copy, or any lawyer's copy before the date until which the copy would otherwise be required to be kept under this Part if—
  - (a) no criminal proceeding is brought; or
  - (b) any criminal proceeding brought is discontinued because the video record evidence is considered to be of insufficient probative value.
- (2) If subclause (1) applies, any reference in this subpart to a destruction date must be read as if that reference were a reference to the date on which that master copy, any copy of the master copy, the working copy, any copy of the working copy, or any lawyer's copy was destroyed.

Compare: SR 1990/164 r 14(10), (11)

*Transcripts***48 Retention and destruction of transcripts**

Any reference in this subpart to a master copy, a copy of a master copy, a working copy, or a copy of a working copy must also apply, with any necessary modifications, to any transcript or copy of a transcript in the custody of any of the following:

- (a) any lawyer for a party to a proceeding to which the transcript relates:
- (b) the police:
- (c) the responsible department:
- (d) the Family Court:
- (e) an authorised advisor.

Compare: SR 1990/164 r 14(9)

**Part 2****Warning or informing jury about very young children's evidence****49 Warning or informing jury about very young children's evidence**

If, in a criminal proceeding tried with a jury in which a witness is a child under the age of 6 years, the Judge is of the opinion that the jury may be assisted by a direction about the evidence of very young children and how the jury should assess that evidence, the Judge may give the jury a direction to the following effect:

- (a) even very young children can accurately remember and report things that have happened to them in the past, but because of developmental differences, children may not report their memories in the same manner or to the same extent as an adult would:
- (b) this does not mean that a child witness is any more or less reliable than an adult witness:
- (c) one difference is that very young children typically say very little without some help to focus on the events in question:
- (d) another difference is that, depending on how they are questioned, very young children can be more open to suggestion than other children or adults:

- (e) the reliability of the evidence of very young children depends on the way they are questioned, and it is important, when deciding how much weight to give to their evidence, to distinguish between open questions aimed at obtaining answers from children in their own words from leading questions that may put words into their mouths.

### **Part 3**

#### **Revocation and transitional provision**

##### **50 Revocation**

The Evidence (Videotaping of Child Complainants) Regulations 1990 (SR 1990/164) are revoked.

##### **51 Transitional provision**

A videotape made before the commencement of these regulations in accordance with the Evidence (Videotaping of Child Complainants) Regulations 1990—

- (a) is deemed to have been made in accordance with these regulations, for the purposes of any proceedings to which the Act applies; and
- (b) may be kept, shown, given, returned, or destroyed in accordance with subparts 2 to 4 of Part 1, which apply with any necessary modifications.

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### **Schedule**

#### **Form**

rr 17(1)(a), 18(1)(a), 30(2)

#### **Form**

#### **Certificate for video record of interview**

Type of copy: [*specify whether master copy, working copy, lawyer's copy, or other*]

Type of electronic record: [*specify whether videotape, DVD, or other*]

Reference number of electronic record:

File number (if applicable):

Date of interview:

Name of person interviewed:

Date of birth of person interviewed:

Form—*continued*

Name of guardian(s) (if person interviewed is under 18 years or mentally impaired):

Name of interviewer:

Designation/rank of interviewer:

Name and designation of all other persons present:

Reasons for interview: [*type of incident or offence*]

Location of interview:

Time interview commenced:

Time interview concluded:

Duration of interview:

Number of tapes/DVDs used for this interview:

Number of breaks in interview:

Reasons for breaks, eg, to speak to another person, for refreshments, or toilet breaks (if applicable):

Reasons for premature conclusion of interview (if applicable):

Cross-reference(s) to other tape/DVD records of person interviewed:

Other:

I certify that the contents of this certificate are correct.

Dated:

Signed:

(Signature of interviewer or member of police)

Rebecca Kitteridge,  
for Clerk of the Executive Council.

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**Explanatory note**

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations are the Evidence Regulations 2007 (the **regulations**).

The regulations, which comes into force on 1 August 2007, are made under the Evidence Act 2006 and the Summary Proceedings Act



1957. The regulations revoke the Evidence (Videotaping of Child Complainants) Regulations 1990.

*Subpart 1 of Part 1* provides for certain requirements that must be complied with when video recording the evidence of a complainant if it is intended that the video record may be offered later as evidence in a criminal proceeding.

*Subpart 2 of Part 1* specifies restrictions on the showing, viewing, copying, and supplying of working copies and master copies of video evidence that has been recorded in accordance with *subpart 1*.

*Subpart 3 of Part 1* sets out restrictions on the use, copying, and supply of any video record evidence by a lawyer for a party to a proceeding who is in possession of a copy of the video record as a consequence of it being offered in evidence at a criminal proceeding (see section 106(4)(a) of the Evidence Act 2006).

*Subpart 4 of Part 1* sets out the obligations relating to the period of retaining and the time for destroying master copies, copies of master copies, working copies, copies of working copies, and lawyers' copies.

*Part 2* sets out the form in which a Judge may warn or inform a jury if evidence is given in a criminal proceeding by a child who is under the age of 6 years.

*Part 3* revokes the Evidence (Videotaping of Child Complainants) Regulations 1990 and contains a transitional provision allowing existing videotapes to continue to be used in proceedings under the Evidence Act 2006.

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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 26 July 2007.

These regulations are administered by the Ministry of Justice.

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