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Issued 25 July 2008

PRACTICE DIRECTION NO 5 OF 2008

I am directed by the Bailiff to issue the following practice direction.

**SPECIAL MEASURES FOR WITNESSES GIVING EVIDENCE IN CRIMINAL
PROCEEDINGS**

1. The “special measures” within contemplation are the giving of evidence by way of live-link pursuant to The Live-Link Evidence (Bailiwick of Guernsey) Ordinance 2008 or the giving of evidence behind a screen. However, other measures may fall within the terms of this Practice Direction – for example, a vulnerable witness might be prepared to give evidence in open court, but would wish for the reassurance of a friend or relative present in Court when he gives evidence.
2. Guernsey does not have detailed legislative provisions equivalent to those in force in England. In particular we have no provisions relating specifically to “vulnerable witnesses”. The utilisation of special measures, accordingly, will not require classification of a witness as “vulnerable”.
3. For evidence to be given by way of live-link the only requirement under the 2008 Ordinance is that the Court is satisfied that it is in the interests of justice to do so. The Court will give in open court its reasons for allowing evidence to be given by way of live-link (or not, as the case may be), after affording the parties the opportunity to make representations on the matter.
4. The occasions where an application for the use of a screen is made are likely to be few. Where such an application is made, existing practice, based on principles developed under English common law, will continue to be followed.

5. It is emphasised that a special measures direction may be given on the application of either Prosecution or Defence.
6. An application for a special measures direction should be made in advance of the hearing at which the evidence is to be given. It should be accompanied by a brief outline of why the measure is sought and a statement from the witness detailing why he would be reluctant or would decline to give evidence without the measure. In the case of a child witness, such statement could be provided by a person who had spoken to the child and could represent the child's views on his behalf. Copies of such documents should be served on the opposing party in advance of the hearing of the application.
7. Where a live-link is employed, the only person who will usually be permitted to be in the link room while the witness gives evidence is a representative of witness/victim support ("the supporter"). The supporter will have had no prior involvement with the case.
8. Before the case begins, the Judge will inquire of the supporter if he has met the witness for the first time that day, if he knows anything about the case, and if he has discussed the witness' evidence with the witness. If the Judge is satisfied with the responses, the supporter will retire from court ready to accompany the witness into the link room. The supporter will remain in view while the witness gives evidence. During any breaks in the evidence, the supporter must not discuss the witness' evidence with the witness.
9. The witness will take the oath in the link room.
10. Exhibits will be taken to the link room by the Usher.
11. The witness may be released from court having given his evidence. However, in case the witness is required to return to court to give further evidence, the supporter should not discuss the case or the witness' evidence with the witness until the hearing has finished.

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