

Island of



Guernsey

Ordinance of the States

XI
2008

Made12th March, 2008

The Live-Link Evidence (Bailiwick of Guernsey) Ordinance, 2008

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THE STATES, in pursuance of their Resolution of 27th February 2008^a, and in exercise of the powers conferred on them by sections 85 and 93(1) of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003^b and sections 23 and 24 of the Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2008^c, and of all other powers enabling them in that behalf, hereby order:-

Making of live-link evidence direction in criminal proceedings.

1. (1) In criminal proceedings before any court in the Bailiwick that court may give a direction ("a live-link evidence direction") that any specified witness in those proceedings, other than the defendant, is to give his evidence from a location other than the courtroom ("the remote location") if the court is satisfied (having regard to any ancillary requirements which might be attached under subsection (5)) that the conditions set out in subsection (2) are fulfilled.

(2) Those conditions are that -

- (a) the parties have been afforded the opportunity to make representations to the court,
- (b) all necessary equipment is or will be in place, and all necessary arrangements have been or will be made, so that -

^a Article VIII of Billet d'État No. II of 2008.

^b Order in Council No. XXIII of 2003.

^c Approved by the States on 12th March 2008.

- (i) the witness can subject to (subsection (3)) be clearly seen and heard by the court, the Greffier or clerk of the court, the defendant and counsel for each of the parties, and
- (ii) the court, the defendant, and counsel for each of the parties can (subject to subsection (3)) be clearly seen and heard by the witness,
- (c) it is in the interests of justice that a live-link evidence direction should be given.

(3) The conditions in paragraph (2) (b) do not prevent the court from making any order which it might otherwise make for the purpose of screening or obscuring a defendant from the view of, or otherwise affording protection to, a vulnerable witness.

(4) For the avoidance of doubt, any party may apply to the court to give a live-link evidence direction, but the court may also give such a direction (subject to paragraph (2) (a)) of its own motion.

(5) A court may attach ancillary requirements to a live-link evidence direction, when making the direction or subsequently, and may subsequently alter any such requirements or revoke the direction.

Effect of live-link evidence direction in criminal proceedings.

2. (1) A witness who gives evidence in criminal proceedings pursuant to a live-link evidence direction is deemed for all purposes to be physically present in the accustomed place from which witnesses give evidence in the courtroom where those proceedings are being conducted.

(2) A person who is to give, or who has given, evidence in criminal proceedings pursuant to a live-link evidence direction is deemed for all purposes to be a person who is to be, or who has been, physically present as described in subsection (1).

(3) Accordingly, and without limiting the generality of subsections (1) and (2) but by way of example -

- (a) the court has the like powers for securing the attendance of the witness at the specified remote location (if within the court's jurisdiction) as it has for securing the attendance of a witness at the courtroom,
- (b) the court may take the evidence of the witness on oath or affirmation,
- (c) the witness may produce any document or article which is in fact present in the courtroom by identifying it from the remote location; but the court may also receive in evidence an image, transmitted to the courtroom from the remote location, of any document or article identified there by the witness,
- (d) the witness cannot be compelled to answer any question, nor to produce any document or article, which he could not be compelled to answer or produce as a witness physically present in the courtroom,

- (e) every immunity or privilege (for example as respects the law of defamation) which would attach to statement made by a witness physically present in the courtroom similarly attaches to any statement made by a witness at the remote location (even if the remote location is beyond the court's jurisdiction); but equally
- (f) every liability (for example as respects contempt of court or perjury) which may arise out of any statement made or thing done or omitted by a witness physically present in the courtroom, may similarly arise out of any statement made or thing done or omitted by a witness at the remote location (even if the remote location is beyond the court's jurisdiction).

Making and effect of live-link evidence direction in civil proceedings, etc.

3. (1) Sections 1 and 2 apply to civil proceedings before any court in Guernsey or Alderney as those sections apply to criminal proceedings, but with the following modifications -

- (a) in section 1(1) for "other than the defendant" there is substituted "including a party to the proceedings",
- (b) in section 1(2)(b), for "the defendant" in both places there is substituted "each of the parties",
- (c) in section 1(3), for "a defendant" there is substituted "a party".

(2) In civil proceedings the references to ancillary requirements in section 1(5) as applied by subsection (1) of this section include -

(a) requiring any party, in addition to paying the appropriate fees under any relevant rules of court, at that party's expense to -

(i) identify and secure access to an appropriate remote location,

(ii) ensure that all necessary equipment is in place and that all necessary arrangements have been made, to satisfy the court that the conditions set out in section 1(2)(b) are fulfilled,

(b) orders as to the payment of costs, including orders in respect of wasted costs if a party fails to comply with such ancillary requirements.

(3) If, having considered representations of the parties to any civil proceedings in accordance with section 1(2)(a) as applied by subsection (1) of this section, the court is satisfied as mentioned in section 1(1) but -

(a) one or more of the parties continues to oppose the giving of a live-link evidence direction, and

(b) in the opinion of the court the interests of justice can equally be achieved by an order under this subsection,

then, instead of giving the direction, the court may direct that the full costs incurred in connection with attendance of the witness concerned in the courtroom are to be paid, in any event, by that party or those parties.

Interpretation.

4. (1) In this Ordinance, unless the context requires otherwise -

"civil proceedings" is to be interpreted in accordance with section 21(1) of the Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2008, as adapted for clarification by subsection (2) of this section,

"criminal proceedings" is to be interpreted in accordance with section 86 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003, as adapted for clarification by subsection (2) of this section,

"live-link evidence direction" means a direction given under section 1(1), or under that provision as applied by section 3(1),

"remote location" means a location other than the courtroom, which may, however, be within the same building as the courtroom, elsewhere within the Island or Bailiwick of Guernsey, or anywhere else in the world,

"specified" means individually identified in, or identifiable by reference to a description of person set out in, a live-link evidence direction, and

"**witness**" includes an expert witness, a witness as to fact, and any other person called upon by a party or by the court to provide any information or opinion which may be relevant to the determination of any issue before the court at any stage of proceedings.

- (2) It is hereby declared for the sake of clarity that references -
- (a) in sections 23 and 21 of the Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2008, and in this Ordinance, to "civil proceedings" include every stage in civil proceedings, from their inception until and including any appeal, in which a witness may be called upon,
 - (b) in sections 85 and 86 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003, and in this Ordinance, to "criminal proceedings" include every stage in criminal proceedings, from their institution until and including any appeal, in which a witness may be called upon.

Extent.

5. This Ordinance has effect throughout the Bailiwick, except that section 3 does not apply in Sark.

Citation.

6. This Ordinance may be cited as the Live-Link Evidence (Bailiwick of Guernsey) Ordinance, 2008.

Commencement.

7. (1) Apart from section 3, this Ordinance shall come into force on 12th March 2008.

(2) Section 3 of this Ordinance shall come into force on the date on which section 23 of the Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2008 comes into force.