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DEATHS

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**PRACTICE DIRECTION NO 3 OF 2013**

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

1. This Practice Direction repeals Practice Direction 1 of 2013 (which has the same title).
2. 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.
3. 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” apart from section 1 (3) of the Ordinance. The utilisation of special measures, accordingly, will not require classification of a witness as “vulnerable, unless it is also intended that the witness is screened or obscured from the view of the defendant.
4. For evidence to be given by way of live-link the 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. The question of vulnerability, should it arise, will then need to be dealt with separately.
5. There will be occasions where an application for the use of a screen is made. In the event of such an application the same principles that apply in relation to live-link evidence will be followed. Accordingly the test will be that the Court is satisfied that it is in the interests of justice to use screens and the procedure in Paragraphs 4, 6 and 7 will be adopted.

6. It is emphasised that a special measures direction may be given on the application of either Prosecution or Defence.
7. 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.
8. 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 other than in the course of acting as a supporter and should not have any knowledge of the circumstances of the case or the evidence the witness can give.
9. It is recognised that a relationship of trust should exist between the supporter and the witness and therefore the supporter should, where possible, be available to meet the witness at any pre-hearing court visit that is arranged. Advocates are therefore encouraged to make applications for special measures at an early stage. Before the actual trial begins the Judge will enquire of the supporter if he has met the witness before and in what circumstances, if he knows anything about the case and if he has discussed the witness's evidence with the witness or anyone else. If the Judge is satisfied with the responses, the supporter will retire from the 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's evidence with the witness or anyone else.
10. The witness will take the oath in the link room.
11. Exhibits will be taken to the link room by the Usher.
12. 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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