

## **The Live-Link Evidence in Civil Proceedings (Sark)**

### **Ordinance, 2020**

**THE CHIEF PLEAS OF SARK**, in pursuance of their Resolution of the 1<sup>st</sup> May, 2019, and in exercise of the powers conferred upon them by section 22 of the Evidence in Civil Proceedings (Sark) Law, 2019<sup>a</sup>, and all other powers enabling them in that behalf, hereby order:-

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

1. (1) In civil proceedings before the Court of the Seneschal ("**the Court**"), the Court may give a direction (a "**live-link evidence direction**") that any specified witness in those proceedings, including a party to the proceedings, is to give 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 –
  - (i) the witness can (subject to subsection (3)) be clearly seen and heard by the Court, the Greffier,

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<sup>a</sup> Order in Council No. XII of 2020.

each of the parties and counsel for each of the parties, and

(ii) the Court, each of the parties and counsel for each of the parties can (subject to subsection (3)) be clearly seen and heard by the witness, and

(c) it is in the interests of justice that a live-link evidence direction should be given.

(3) The conditions in subsection (2)(b) do not prevent the Court from making any order which it might otherwise make for the purpose of screening or obscuring a party 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 for a live-link evidence direction, but the Court may also give such a direction (subject to subsection (2)(a)) of its own motion.

(5) The 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.

(6) The reference to ancillary requirements in subsection (5) includes –

(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 subsection (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.

(7) If, having considered representations of the parties to any civil proceedings in accordance with subsection (2)(a), the Court is satisfied as mentioned in subsection (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,

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

(8) In subsection (1), "**specified**" means individually identified in, or identifiable by reference to a description of a person set out in, a live-link evidence direction.

**Effect of live-link evidence direction in civil proceedings.**

2. (1) A witness who gives evidence in civil 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 civil 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) –

- (a) the Court has the like powers for securing the attendance of the witness at the remote location specified in the live-link evidence direction (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 the witness 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 a 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).

**Interpretation.**

3. In this Ordinance, unless the context otherwise requires -

"**civil proceedings**" has the meaning given in the Evidence in Civil Proceedings (Sark) Law, 2019,

"**live-link evidence direction**" means a direction given under section 1(1),

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

**Extent.**

4. This Ordinance has effect in Sark.

**Citation.**

5. This Ordinance may be cited as the Live-Link Evidence in Civil Proceedings (Sark) Ordinance, 2020.

**Commencement.**

6. This Ordinance shall come into force on the date on which the Evidence in Civil Proceedings (Sark) Law, 2020 comes into force.