
**CONSOLIDATED PRACTICE DIRECTION
(CRIMINAL PROCEEDINGS)**

This is a consolidated version of this legislation i.e. it incorporates all amendments made since the legislation was enacted as set out in the table below. It has been produced by the SBAA as an aid to transparency and easier access to SBA law. However, it is not the official version of SBA legislation and, although every effort has been made to check the document, its accuracy cannot be guaranteed. The official version of legislation is published in the SBA Gazette.

Legislation incorporated in this Consolidation	Public Instruments	Date in Force
Consolidated Practice Direction (Criminal Proceedings) 2015	12/2015	27/06/2015
Consolidated Practice Direction (Criminal Proceedings) 2018	05/2018	09/08/2018

General

This Consolidated Practice Direction is issued by the Presiding Judge of the Sovereign Base Areas of Akrotiri and Dhekelia under section 28(1) of the Courts (Constitution and Jurisdiction) Ordinance 2007. It is intended to consolidate and update a number of practice directions and memoranda issued by the SBA Courts since 1983.

This Practice Direction applies to criminal proceedings and has effect in the Resident Judge's Court and the Senior Judges' Court. All previous Practice Directions are revoked.

Language of the Courts

1. All proceedings in the Sovereign Base Areas Court will be conducted in the English language.
2. Advocates are not permitted to address the Court in any language other than English.
3. Where an accused is ignorant of the English language and is undefended, the proceedings at the trial must be translated to and for him. Where the accused has hearing or speech difficulties (or both), the judge must see that proper means are taken to communicate to him the case made against him and to enable him to make his answer to it. Where the accused is represented, only the evidence should be interpreted to him, except when he or his counsel expresses a wish to dispense with the translation, and the judge thinks fit to permit the omission; the judge should not permit it unless he is of opinion that, by reason of what has passed before the trial, the accused substantially understands the evidence to be given and the case to be made against him at the trial.
4. A process of double translation is permissible in those cases where it proves impossible to find an interpreter who is fluent in both English and a language in which the defendant is fluent. However, it is important that both translators who are used in such a situation are wholly impartial and suitably skilled in the interpretation of their particular part of the process and that each is fluent in their common language as well as in either the language used by the defendant or in English.
5. Where a document relied upon is not in the English language, the party relying on it must, at the same time as filing the original, also file a translation into the English language of the document together with a sworn affidavit that the translation is true and accurate. A document produced without a translation will not be taken into account by the Court. This requirement to provide a translation is subject to the discretion of the Judge where it is deemed by the Judge to be expedient to dispense with the need for a translation.

Court Office Opening Hours and Filing of Documents

1. The opening hours for the public for the court offices at Episkopi and Dhekelia are 08:00 - 12:00 from Monday to Friday, and additionally 15:00 to 16:00 on Monday only. Any documents required to be filed with the Court or served on a party by a particular date must be so filed and served within the court opening hours specified in this paragraph.

2. When interim orders are sought, the correct number of copies of each document to be filed and served, together with any required translation, must be produced to the court office in sets, with the phrase "Certified True Copy" at the front of each set of documents.

3. In any case where a party is under a duty to file a document by a particular date pursuant to any legislation or an order of the Court and fails to do so without good reason, the party may face sanctions. These may, subject to the discretion of the Judge, include:

- (a) refusal to admit documents, and/or
- (b) a costs order against the defaulting party.

This will apply to all parties including the Crown

Amended Charge Sheets

Where a Charge Sheet is amended in any way, the prosecution must file with the Court soon as such amendment is made, the amended Charge Sheet. The amended Charge Sheet must bear the word "Amended" in the title and the date of amendment.

Temporary absence of a court staff

1. In the event of the temporary absence of court staff (including a court registrar) at either the court office at Episkopi or at Dhekelia, any party wishing for an action to be performed (which may only be performed by a member of court staff) will have to take the matter to the court where a court registrar or other member of court staff is available.

2. A court registrar or any other member of court staff will not be required to travel to another court office to perform such an action.

Listing of Cases

1. Cases will be listed at 08:30 a.m. on each sitting day. Other than in exceptional circumstances, any application to have a case listed at a different time must be made in open court.

2. Subject to the overall discretion of the Judge, the order in which cases are called on in Court is to be determined by the court registrar.

3. Where a party wishes for a case to be given priority in the daily list, a formal application should normally be made to the Registrar before the Court sitting, giving a valid reason.

4. It is not consistent with the efficient running of the Court to make such applications once the Court is sitting.

5. *Save and except cases of an exceptionally urgent nature no case shall be allocated during weekends without the approval of the Presiding Senior Judge. (a)*

6. *No application to list any case during August, save for urgent cases as provided for pursuant to the provisions of the Criminal Procedure Ordinance 9 of 2016, shall be made without the permission of the Presiding Senior Judge.*

(a) Parts 5 & 6 inserted by Public Instrument 05/2018 – came into force on 09 August 2018

Case Management

1. The Court may require a party to provide a certificate of readiness.
2. Where the Court has fixed a date for a hearing, any party who seeks an adjournment of the hearing must:
 - (a) make an application for an adjournment, in writing, to the registrar at least 10 working days before the hearing, and
 - (b) at the same time, send a copy of the application to the other party.The other party must:
 - (a) inform the registrar, in writing, within three days of receiving such application whether or not it opposes it, and
 - (b) at the same time send a copy of such response to the party making the application.
3. Where an advocate discovers, subsequent to a case being fixed for hearing, that another case in which he or she is concerned is due to be heard in another court on the same date, then it is the duty of the advocate either to seek to re-arrange the hearing for the other case, or to arrange for another advocate to act in the SBA case.
4. Adjournments of hearings will not usually be permitted other than in exceptional circumstances.
5. Any failure to abide by these Practice Directions on case management may result in the offending party having to pay the costs of any other party resulting from the failure.

Service of Papers

1. In all cases where a party to the proceedings is not legally represented, the service of papers will be made, and will be deemed to be effective, when handed to that person or sent to the address provided by that person to the Court.
2. Where a party to the proceedings is legally represented (nominated legal representative), service of any papers will be deemed to have been effected by:
 - (a) delivering the papers to any person, organisation or business notified to the Court and to the other party by a party's nominated legal representative, or
 - (b) by posting or delivering the papers to an address within the Sovereign Base Areas or the Republic of Cyprus which is notified to the Court and the other party by a party's nominated legal representative.
3. Where a nominated legal representative instructs either counsel or another advocate who is normally resident or who practises outside the jurisdiction of the Sovereign Base Areas or the Republic of Cyprus, the nominated legal representative must still accept service of papers and is responsible for their onward transmission on behalf of his client to any counsel or advocate instructed unless the nominated legal representative applies to come off the record and permission for him to do so has been granted by the Senior Registrar or the Court.
4. If permission is granted, then that person cannot thereafter accept service of papers. The party to the proceedings must either nominate another legal representative who will accept service of documents within the Sovereign Base Areas or the Republic of Cyprus or the party must personally accept responsibility for their reception and any onward transmission to any counsel or other advocate instructed.
5. No party to proceedings in the Court will be entitled to service of more than one set of papers without permission of a Judge.
6. If the person to be served had given an electronic address and has not refused to accept service by electronic means or the person to be served is legally represented in the case and the representative has given an electronic address, then a document may be served by transmitting it

by electronic means to that person or representative, as appropriate, at that address. Where a document is served electronically, the person serving it need not provide a paper copy as well.

7. These provisions about service do not apply to the service of summonses, to which section 46 of the Criminal Procedure Ordinance applies.

Coming off the record

1. Where the legal representative of a party applies to come off the record, he must show cause to the Senior Registrar. Permission will be granted only if sufficient cause is shown and, if refused, the legal representative may request that his application be referred to a Judge whose decision will be final.

2. If any such application is made shortly before or in the course of a trial, it must be made to the trial Judge.

Transcripts

1. Transcripts of hearings should not, as a matter of course, be necessary. Parties to a hearing should normally take as full a note of the proceedings as fulfils their own purposes. Recourse to an official transcript should only be necessary in a very limited number of cases.

2. Transcripts of proceedings will not be provided save on the application of a party or other person, who can demonstrate a sufficient interest in the proceedings in question, and sufficient reason for needing a transcript.

3. Application for a transcript must be made, in writing, within 14 days of the conclusion of the proceedings.

4. The application must be made in the first instance to the Resident Judge. If the application is refused, it can be renewed (in writing) either to a Senior Judge who is present in the Sovereign Base Areas or to the Presiding Judge. A decision will be made without oral submissions, and may be communicated by fax, email or telephone to the Senior Registrar who will inform the applicant forthwith.

5. The Court may permit the applicant to have access to all or such part of the transcript, by such means and at such times as may be specified in the permission and on such terms (including terms restraining the publication, dissemination or further disclosure of all or any part of the transcript by the applicant, and the giving of an undertaking to such effect) as the court may direct.

6. If, at the conclusion of the proceedings for which any transcript has been provided the Court is satisfied (upon the balance of probabilities) that the provision of such transcript was not necessary, to the Court may consider whether the party who applied for the transcript should make full or partial contribution towards the cost of its provision, unless prohibited from doing so by legislation.

7. In order to avoid the need for transcripts, a party who can demonstrate an interest in the proceedings may apply to the Senior Registrar for a copy of the tape recording of the relevant part of the proceedings. Again, the Court may permit the applicant to have access to all or such part of the recording, by such means and at such times as may be specified in the permission and on such terms (including terms restraining the publication, dissemination or further disclosure of all or any part of the recording by the applicant, and the giving of an undertaking to such effect) as the court may direct.

8. The cost of preparation of a transcript is the responsibility of the party who requests the same.

9. Transcripts may only be prepared by a transcriber authorised by the Ministry of Justice of England and Wales.

10. *Urgent applications for a transcript of proceedings must be made to the trial judge who will then decide whether or not to grant the same having consulted the*

Senior Registrar. The trial judge may order the provision of a CD containing the necessary instead of or in addition to any transcript. (a)

Allocation of criminal cases

1. In all criminal cases, the Resident Judge's Court will take the plea of any accused brought before it.

2. The Senior Registrar will refer the following cases to the Presiding Judge for a decision as to whether the case should be heard by the Resident Judge or a Senior Judge (or Senior Judges) sitting as the Resident Judge's Court:

- (a) all cases where a not guilty plea is entered and the offence carries a maximum penalty of five or more years imprisonment (other than where the prosecutor decides not to proceed or the matter is not going to be the subject of a trial), except in the following cases:
 - (i) theft to a value of no greater than €750;
 - (ii) simple possession of cannabis or cannabis resin no greater than 1 gram;
- (b) all sexual offences cases;
- (c) all cases involving the death of another.

3. To assist the Presiding Judge in reaching his decision, a brief synopsis of the case shall be drafted by the prosecution.

4. In the event of a plea of guilty where the maximum sentence permitted by legislation is five years or greater and the Resident Judge's Court considers that the case may warrant a sentence in excess of five years, the Senior Registrar must seek the directions of the Presiding Judge so that he may consider whether the case should be heard by a Senior Judge (or Senior Judges) sitting as the Resident Judge's Court.

Filing of documents:

Unless the Court directs otherwise:

1.

2. In addition to the original document(s) to be filed, the parties must file sufficient copies of these documents for the Judge(s) hearing the case and the other parties.

3. If any of the documents referred to in paragraph 1 above are in any language apart from English then, these must be filed together with a certified translation. A document produced without a translation will not be taken into account by the Court.

4. Within 24 hours from the filing of any documentation in Court, the party filing it must also file it electronically to the email address of the Senior Registrar and/or the Registrar. Documents must be filed in Word Format where possible. Omission to file the documents electronically within the above prescribed time-limit renders the filing invalid.

Wasted Costs Order

1. In the exercise of its inherent jurisdiction over Officers of the Court the Court may order an advocate personally to pay costs thrown away by reason of a serious breach on the part of the advocate of his duty to the court.

(a) Part 10 inserted by Public Instrument 05/2018 – came into force on 09 August 2018

2. No such order may be made unless reasonable notice has been given to the advocate of the matter alleged against him and he is given a reasonable opportunity of being heard in reply.

3. This power should be used only in exceptional circumstances.

Directions' Template

1. In all contested cases, the parties must complete the Directions Template at Annex A at the time that the plea is entered, or at such time as the Judge may order (or further order), and the Judge may give directions in order to ensure compliance with the proposed timetable.

2. A party who cannot comply with the directions must apply in writing to vary the timetable before the expiry of the date for compliance with the direction and must copy such application to any other party. A Judge may permit extension of the time for compliance if good reason is shown.

Vulnerable witnesses - Use of Live Television Link and Video Recorded Evidence:

1. The Sovereign Base Areas courts are fitted with equipment to enable a witness to give evidence by means of a live television link or a video recorded interview.

2. This Practice Direction is intended to serve as a general guide on the administrative arrangements for the use of such equipment in proceedings before a court of the Sovereign Base Areas where there is an application for a Special Measures direction relating to vulnerable or intimidated witnesses:

- (a) enabling a witness to give evidence by means of a live television link whereby the witness, while absent from the court room, is able to see and hear a person there and to be seen and heard by:
 - (i) the Judge or Judges
 - (ii) the legal representatives, and
 - (iii) any interpreter or other person appointed to assist the witness,
- (b) where a party intends to rely on a video recorded interviews of a witness; or
- (c) enabling a video recording of an interview of a witness to be admitted as evidence in chief of the witness.

3. This Practice Direction is also applicable where an application is made to adduce video evidence under the Violence in the Family Ordinance 2003.

4. Attached at Annex B are Appendices A to D dealing with the practice in relation to:

- (a) Court witness supporter in the television link room (Appendix A).
- (b) Storage, custody and destruction of recordings (Appendix B).
- (c) Specimen form of receipt of undertaking for visually recorded evidence (Appendix C).
- (d) Technical guidance (Appendix D).
- (e) Warning label (Appendix E).

Judicial responsibility for witnesses

5. Judges have a duty to protect the interests of the defendant at trial, where he or she is presumed to be innocent until proven guilty. However they also have a responsibility to ensure that all witnesses, including those who are vulnerable or intimidated, are enabled to give their evidence in such a manner that the quality of evidence given by the witness is not likely to be diminished by reason of fear or distress.

The responsibility of legal representatives

6. Legal representatives must assist the court, at any hearing where the matter arises, to make informed decisions about any Special Measures, or other steps which it may be necessary to take, to assist a particular witness. Both prosecution and defence legal representatives are expected to inform the judge of the special needs of any vulnerable or intimidated witness they intend to call.

Notice

7. An application by a party for a Special Measures direction of the kind referred to in paragraph 2 above must be sent to the court and every other party in the proceedings by the applicant at least 21 days before the trial date. The purpose of such notice is to enable the court to consider, and rule on any objection to, the application, to ensure that the equipment is in good working order and the appropriate persons are available to operate the equipment in the event that the Special Measures direction is made.

8. A party wishing to oppose the application must, within 7 days of the date on which the application was served on him, notify the applicant and the court in writing of his opposition and the reasons for it.

9. Notwithstanding the provisions of paragraphs 4, 5 and 6 an application may be made for a Special Measures direction orally at the trial (with reasons why the application is being made at that stage), or the court may of its own motion raise the issue whether a Special Measures direction should be made if the court is satisfied that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings and take such steps as it considers necessary to secure the quality of evidence from a witness.

Operation of the equipment

10. The equipment referred to in paragraph 1 above will be operated by court staff, or if such staff is unavailable then by such person or persons as the judge considers to be suitably qualified.

Remote equipment

11. Where a party wishes to adduce witness evidence from a witness who will be situated in a place other than the courtroom where the case is to be heard (“TV link room”), it is for that party to make the arrangements for the attendance of the witness at the remote location. These arrangements should include providing suitably qualified operators for cameras and sound recording equipment at the remote location.

12. In such a case, it is important that as much notice as reasonably practicable is given the court and the other party so that the court may make any direction or directions necessary, including but not limited to directing that SBA court staff liaise with those persons operating the equipment from the remote location and ensuring that the equipment is in good working order. Where possible arrangements are to be agreed between the parties. The court will need to be satisfied that the arrangements at the remote location are satisfactory and consistent with this protocol before allowing testimony.

Witness support

13. The judge having conduct of the case will determine who is to be the Court Witness Supporter (“CWS”), adhering as far as possible the key characteristics of that role set out in paragraph 4 of Appendix A and the needs of the particular witness.

Failure of equipment

14. In the event that video equipment fails, the judge who is hearing the matter will hear representations as to how the hearing should proceed.

Appeals

1. In any case where the permission of the Court to appeal is required, the Senior Registrar or the Registrar shall request the Presiding Judge to select the Judges to sit on the appeal.

2. In the event of the Presiding Judge having sat in the Court that determined the case under appeal, the Senior Registrar or the Registrar shall ask the next most Senior Judge, by appointment of the panel of Senior Judges, who did not determine the case under appeal, to select the judges to try the case under appeal.

3. Where permission to appeal is granted (or permission to appeal is not required), the appellant or his advocate must file and serve skeleton arguments within 10 working days of the grant of permission to appeal or service of the notice of appeal, as appropriate.

4. The respondent or his advocate must file and serve skeleton arguments within 10 working days of receipt of the appellant's skeleton argument.

5. The skeleton arguments must contain:

- (a) the time estimate for the hearing including delivery of judgment;
- (b) a list of the issues of both law and fact;
- (c) a list of authorities to be relied upon together with page references to the relevant passages;
- (d) copies of the authorities relied upon, translated into English where necessary.

6. Supplementary skeleton arguments must be served by any party, where appropriate, at least five working days before the hearing.

Disqualification from Driving

1. In any case involving disqualification from driving under section 12 of the Drinking and Driving Ordinance 1993, it is for the defence to show, on a balance of probabilities, that there are special reasons why the person convicted should not be disqualified or why he should be disqualified for a term less than the minimum term specified in section 12.

2. The former practice of evidence of special reasons being required to be given under oath should no longer be followed. In future it will be for the Judge concerned to decide, at his discretion, whether or not he wishes to hear evidence on oath or otherwise. In cases where the material relied upon is within the particular knowledge of the person convicted (for example, that drinks were laced), then the Judge concerned is likely to wish to hear such evidence by sworn testimony.

3. Where the prosecutor has concerns about the truth of any submission made by the defence, he is entitled to make such representations as he sees fit, including whether there should be evidence on oath or otherwise by or on behalf of the convicted person, or seek permission to call evidence in rebuttal of any evidence given or submissions made by the defence.

The Hon. Mr. Justice A. Collender Q.C.

Presiding Senior Judge