

## ORDINANCE 4 OF 2005

### AN ORDINANCE TO PROVIDE FOR THE PROTECTION OF WITNESSES AND RELATED MATTERS

**P. T. C. Pearson CBE**  
**ADMINISTRATOR**

*11th February 2005.*

**BE** it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

#### **PART I** **INTRODUCTORY PROVISIONS**

**1.** This Ordinance may be cited as the Protection of Witnesses Ordinance 2005. Short title.

**2.** In this Ordinance— Interpretation.  
“a special measures direction” has the meaning given by section 4;  
“live link” means a television link or other arrangement whereby a witness, while absent from the Court room or other place where proceedings are being held, is able to see and hear persons in that court room or other place and to be seen and heard by the persons described in section 6.

#### **PART II** **WITNESSES ELIGIBLE FOR ASSISTANCE**

**3.—**(1) A witness in criminal proceedings (other than the accused) is eligible for assistance by virtue of this subsection— Witnesses eligible for assistance.

- (a) if he is under the age of 18 at the time of the hearing; or
- (b) if the Court considers that the quality of the evidence given by the witness is likely to be diminished by the fact that he is a mental patient or otherwise has a significant impairment of intelligence and social functioning; or
- (c) if he has a physical disability or is suffering from a physical disorder.

(2) A witness in criminal proceedings (other than the accused) is eligible for assistance under this subsection 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.

(3) In determining whether a witness falls within subsection (2) above the Court shall take into account in particular the following matters—

- (a) the nature and alleged circumstances of the offence to which the proceedings relate;
- (b) the age of the witness;
- (c) such of the following matters as appear to the Court to be relevant—
  - (i) the social and cultural background and ethnic origins of the witness;
  - (ii) the domestic and employment circumstances of the witness;
  - (iii) any religious beliefs or political opinions of the witness;
- (d) the behaviour towards the witness on the part of—
  - (i) the accused;
  - (ii) members of the family or associates of the accused;
 or
  - (iii) any other person who is likely to be an accused or a witness in the proceedings;
- (e) the views of the witness.

(4) Where the victim of an alleged offence under the Violence In the Family Ordinance 2003 is a witness in criminal proceedings in respect of that offence, he shall be considered to be a witness requiring assistance in relation to those proceedings by reason of this subsection, unless the witness has informed the Court of his wish not to be so considered.

Ordinance  
21/2003.

### **PART III**

#### **MEASURES FOR THE PROTECTION OF WITNESSES**

Special measures  
directions.

**4.—**(1) A Court may, either on the application of any party to criminal proceedings or of its own motion, order that a witness shall be considered to be a witness eligible for assistance under this Ordinance.

(2) Where a Court orders that a witness is to be considered to be a witness eligible for assistance under this Ordinance, it must then determine whether any special measures available in relation to the witness would, in its opinion, be likely to improve the quality of evidence given by the witness and if it determines that such measures would do so, it shall give a direction (“a special measures direction”) under this section providing for the measures so determined to apply to evidence given by the witness.

(3) Subject to subsection (2) above, a special measures direction has effect from the time that it is made until the conclusion of the

trial for the purposes of which it was made unless the Court amends it or revokes it in the interests of justice.

**5.—**(1) In the course of any criminal proceedings the Court may, for the purposes of protecting a witness eligible for assistance, direct that—

Special measures.

- (a) all or part of the case be heard in private; and
- (b) the testimony of any witness eligible for assistance or the testimony of any other person whose testimony might be adversely affected if given in the presence of the accused, be given in the absence of the accused, provided that all necessary steps are taken to ensure that the accused has knowledge of the testimony given by the witness and the witness can be cross-examined by the accused or by his legal representative.

(2) Without prejudice to the generality of subsection (1) above the Court may, in particular for the purposes of protecting a witness, order any of the following—

- (a) the use of a screen; or
- (b) the use of a live link; or
- (c) the adoption of any other means or system,

so that the accused and the witness are not visible one to the other.

(3) In order to ensure that the rights of the accused are protected, the Court shall, in such cases as are described in subsections (1) and (2) above, be satisfied that the necessary technological and other arrangements are made and that all the necessary measures are taken so that the accused may follow the procedure audibly and is able to give instructions to his legal representative.

**6.** Where a Court includes in a special measures direction that a witness is to be protected by means of a screen from seeing the accused, the screen must not prevent the witness from being able to see, and to be seen by the Court, the legal representatives of the parties and any interpreter or other person appointed to assist the witness.

Screens.

**7.** Where a Court includes in a special measures direction that the evidence of a witness may be given by means of a live link, the witness must, while so giving his evidence, be capable of seeing and hearing any person at the place where the proceedings are taking place and must be visible and audible to such persons as are mentioned in section 6 above.

Live link.

**8.—**(1) Where a Court includes in a special measures direction that a hearing is to take place in private it may, subject to subsection (2) below, order the exclusion from the place where the hearing is taking place of such persons as the Court may specify.

Evidence given in private.

(2) The Court may not exclude the accused, the personal representatives of the parties or any interpreter or other person appointed to assist a witness.

**9.—**(1) Subject to the provisions of this section, a special measures direction may provide for a video recording of an interview of the witness to be admitted as evidence in chief of the witness.

Video recorded evidence in chief.

(2) A special measures direction may not, however, provide for a video recording, or a part of such a recording, to be admitted under this section if the Court is of the opinion, having regard to all the circumstances of the case, that in the interests of justice the recording, or that part of it, should not be so admitted.

(3) The Court shall not admit a video recorded interview under subsection (1) above, unless—

- (a) the video recording relates to the case which the Court is trying;
- (b) the witness whose interview is being video recorded is available to be cross-examined if this is requested;
- (c) the video recorded interview is taken in accordance with the rules in section 10 below;
- (d) there is a transcript of the sound recording which accompanies the visual recording of the interview.

**10.** The rules for taking a video recorded interview are as follows—

- (a) the name, address, occupation and capacity of the person conducting the interview and of the person operating the recording equipment shall be stated or written before the beginning of the interview;
- (b) the place, date and times at which the recording started and ended shall be included in the recording;
- (c) the name, address and occupation of the person being interviewed shall be stated or written;
- (d) there shall be included in writing a statement by the person conducting the interview to the person being interviewed that the interview is to be video recorded and might be produced in Court in evidence, and a statement by the person being interviewed that he consents to the recording of the interview:

Provided that in the case of a person who is under age such consent shall be given by the person having parental care of the person being interviewed;

- (e) the operator of the video recording equipment shall produce the video tape recording and shall confirm on oath that the recording is an accurate recording of the interview and that nothing has been added or erased to whatsoever was said during the recording and that no other alteration has been made to the recording;
- (f) a copy of the video recorded interview shall be given to the person who was interviewed or, where that person is under age, to the person who had given his consent under the proviso to paragraph (d) above.

**11.** When a video recording is admitted under this Ordinance—

- (a) the witness may not give evidence in chief as to any matter which, in the opinion of the Court, has been dealt with adequately in the witness's recorded testimony; and
- (b) the witness shall be available for cross-examination.

Rules for video recording interview.

Admitting video recorded interview.

**12.—**(1) When a video recorded interview of a witness is admitted as his examination in chief the Court may order—

Recording of  
cross-examination  
and  
re-examination.

- (a) that the cross-examination and re-examination of the witness be video recorded; and
- (b) that the video recording of such cross-examination and re-examination be admitted as the testimony of the witness.

(2) A video recording admitted under subsection (1) above shall be made in the presence of such persons as the Court shall order so that—

- (a) the Court and the legal representatives of the parties may see and hear the examination of the witness and may communicate with the persons in whose presence the witness is being cross examined and re-examined; and
- (b) the accused may see and hear the said cross-examination and re-examination and may communicate with his legal representative.

(3) The Court may exclude the video recording of the cross-examination or re-examination of a witness if, in the Court's opinion, the requirements of subsection (2) have not been satisfied.

(4) A witness whose cross-examination or re-examination has been recorded under this section shall not be cross examined or re-examined subsequently to the recording, unless the Court otherwise orders.

(5) The Court may order a subsequent cross-examination or re-examination of a witness whose cross-examination and re-examination has been video recorded if it considers it to be in the interests of justice.

**13.—**(1) The Court, when considering an application for the admission of a video recorded interview of a witness eligible for assistance, may, if the interests of justice so require, order that specific parts of the recording are not to be admitted in evidence.

Court may  
exclude part of  
video recorded  
testimony.

(2) The Court, when pursuant to subsection (1) above, is considering whether to exclude part of a recorded interview, shall take into account any possible prejudice to the accused (or to any of them if there is more than one) which may arise from such exclusion, and whether any such prejudice outweighs the benefit of admitting the recorded interview in full.

(3) The Court may order that part of a video recorded interview or part of the transcript of the sound recording be deleted, if it considers that it is not admissible or if it considers that it is necessary to do so in the exercise of its powers under section 9(2).

**14.—**(1) Subsections (2), (3) and (4) shall apply to a statement admitted in evidence although it was made otherwise than by way of direct oral testimony in Court by a witness eligible for assistance.

Statement treated  
as direct oral  
testimony.

(2) The statement shall be treated as if it had been given by the witness by way of direct oral testimony in Court and accordingly —

- (a) it is admissible as evidence of any fact of which such testimony in Court by the witness would be admissible;
- (b) it is not capable of corroborating any other evidence given by that witness.

(3) Subsection (2) applies to a statement admitted in evidence notwithstanding the fact that it was not made by the witness on oath whereas it would have been required to have been made on oath if made by the witness in direct oral testimony in Court.

(4) In determining the weight to be attached to such a statement, the Court shall have regard to all the circumstances from which an inference can reasonably be drawn.

(5) Nothing in this Ordinance, other than the provisions of subsection (3) above, affects any rule of law relating to evidence in criminal proceedings.

Prohibition on  
disclosing identity  
Ordinance  
21/2003.

**15.—**(1) A person shall not publish or in any other way disclose the identity of any person (“the victim”) against whom an offence has been committed contrary to the Violence In the Family Ordinance 2003, nor disclose any of the victim’s evidence.

(2) A person shall not publish or in any other way disclose the name or any part of the evidence given by a witness in a case such as is mentioned in subsection (1) above.

(3) A person who contravenes the provisions of subsection (1) or (2) above is guilty of an offence for which he is liable to a term of imprisonment not exceeding three years or to a fine not exceeding £3.000 or to both such a term of imprisonment and such a fine.

#### **PART IV REGULATIONS AND COMMENCEMENT**

Criminal offences  
Rules of Court  
Cap 155 (Laws  
of Cyprus) as  
amended by  
Ordinances 4/60,  
19/63, 1/66, 2/72,  
2/73, 10/75, 4/78,  
11/79, 22/87, 4/92,  
8/96, 1/97, 22/99,  
17/03 and 43/03.

**16.** The powers of the Administrator under section 176 of the Criminal Procedure Ordinance to make Rules of Court for the better carrying out of that Ordinance shall be construed as including a power to make Rules of Court for the better carrying out of this Ordinance.

Commencement.

**17.—**This Ordinance shall come into force on the date of its publication in the Gazette.

*11th February 2005*  
(SBA/128/105)

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J. E. Stainton,  
Acting Chief Officer.  
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