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**PROTECTION OF WITNESSES (AMENDMENT) ORDINANCE 2013**

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An Ordinance to amend the Protection of Witnesses Ordinance 2005

**R. J. CRIPWELL**  
**ADMINISTRATOR**

*25th October 2013.*

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

**1. Short title**

This Ordinance may be cited as the Protection of Witnesses (Amendment) Ordinance 2013.

**2. Commencement**

This Ordinance comes into force on 1 November 2013.

**3. Application**

The amendments made by this Ordinance apply to criminal proceedings begun before and after this Ordinance comes into force.

**4. Protection of Witnesses Ordinance 2005 amended**

The Protection of Witnesses Ordinance 2005(a) is amended in accordance with section 5.

**5. New Part 3A inserted**

The following Part is inserted after Part 3—

**“Part 3A**

Anonymity of Witnesses

**15A. Witness anonymity orders**

- (1) In criminal proceedings, a court may make an order (a “witness anonymity order”) requiring such specified measures to be taken in relation to a witness (including a proposed witness) in the proceedings as the court considers appropriate to ensure that the identity of the witness is not disclosed in or in connection with the proceedings.

- (2) Without limiting subsection (1), a witness anonymity order may require measures to be taken in relation to a witness for securing 1 or more of the following—
  - (a) that the witness’s name and other identifying details are—
    - (i) withheld;
    - (ii) removed from materials disclosed to any party to the proceedings;
  - (b) that the witness uses a pseudonym;
  - (c) that the witness is not asked questions of any specified description that might lead to the identification of the witness;
  - (d) that the witness is screened to any specified extent;
  - (e) that the witness’s voice is subjected to modulation to any specified extent.
- (3) Nothing in this section authorises the court to require—
  - (a) the witness to be screened to such an extent that the witness cannot be seen by the judge;
  - (b) the witness’s voice to be modulated to such an extent that the witness’s natural voice cannot be heard by the judge.
- (4) In this section, “specified” means specified in the witness anonymity order.

#### **15B. Applications for witness anonymity orders**

- (1) An application for a witness anonymity order to be made in relation to a witness in criminal proceedings may be made to the court by the prosecutor or the accused.
- (2) Where an application is made by the prosecutor, the prosecutor—
  - (a) must (unless the court directs otherwise) inform the court of the identity of the witness; but
  - (b) is not required in connection with the application to disclose to any other party to the proceedings or to the party’s legal representative—
    - (i) the identity of the witness; or
    - (ii) any information that might enable the witness to be identified.
- (3) Where an application is made by the accused, the accused—
  - (a) must inform the court and the prosecutor of the identity of the witness; but
  - (b) (if there is more than 1 accused) is not required in connection with the application to disclose to any other accused or to the accused’s legal representative—
    - (i) the identity of the witness; or
    - (ii) any information that might enable the witness to be identified.
- (4) Accordingly, where the prosecutor or the accused proposes to make an application under this section in respect of a witness, any relevant material disclosed on behalf of that party before the determination of the application may be disclosed in such a way as to prevent the following from being disclosed (except as required by subsection (2)(a) or (3)(a))—
  - (a) the identity of the witness;
  - (b) any information that might enable the witness to be identified.
- (5) In subsection (4), “relevant material” means any document or other

material that falls to be disclosed, or is sought to be relied on, by or on behalf of the party concerned in connection with the proceedings or proceedings preliminary to them.

- (6) The court must give every party to the proceedings the opportunity to be heard on an application under this section.
- (7) But subsection (6) does not prevent the court hearing 1 or more parties in the absence of an accused and the accused's legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.

#### **15C. Conditions for making witness anonymity orders**

- (1) This section applies where an application is made for a witness anonymity order to be made in relation to a witness in criminal proceedings.
- (2) The court may make a witness anonymity order only if it is satisfied that Conditions A, B and C are met.
- (3) Condition A is that the proposed order is necessary—
  - (a) in order to protect the safety of the witness or another person or to prevent any serious damage to property; or
  - (b) in order to prevent real harm to the public interest (whether affecting the carrying on of any activities in the public interest or the safety of a person involved in carrying on such activities, or otherwise).
- (4) Condition B is that, having regard to all the circumstances, the effect of the proposed order would be consistent with the accused receiving a fair trial.
- (5) Condition C is that the importance of the witness's testimony is such that in the interests of justice the witness ought to testify and—
  - (a) the witness would not testify if the proposed order were not made; or
  - (b) there would be real harm to the public interest if the witness were to testify without the proposed order being made.
- (6) In determining whether the proposed order is necessary for the purpose mentioned in subsection (3)(a), the court must have regard, in particular, to any reasonable fear on the part of the witness that, if the witness were to be identified,—
  - (a) the witness or another person would suffer death or injury; or
  - (b) there would be serious damage to property.

#### **15D. Relevant considerations for making witness anonymity orders**

- (1) When deciding whether Conditions A, B and C in section 15C are met in the case of an application for a witness anonymity order, the court must have regard to—
  - (a) the considerations mentioned in subsection (2); and
  - (b) such other matters as the court considers relevant.
- (2) The considerations are—
  - (a) the general right of an accused in criminal proceedings to know the identity of a witness in the proceedings;
  - (b) the extent to which the credibility of the witness concerned would be a relevant factor when the weight of the witness's evidence comes to be assessed;
  - (c) whether the evidence given by the witness might be the sole or decisive evidence implicating the accused;
  - (d) whether the witness's evidence could be properly tested

- (whether on grounds of credibility or otherwise) without the witness's identity being disclosed;
- (e) whether there is any reason to believe that the witness, having regard (in particular) to any previous convictions of the witness and to any relationship between the witness and the accused or any associates of the accused,—
  - (i) has a tendency to be dishonest; or
  - (ii) has any motive to be dishonest in the circumstances of the case;
- (f) whether it would be reasonably practicable to protect the witness by any means other than by making a witness anonymity order specifying the measures that are under consideration by the court.

#### **15E. Discharge or variation of witness anonymity orders during proceedings**

- (1) A court that has made a witness anonymity order in relation to any criminal proceedings may in those proceedings subsequently discharge or vary (or further vary) the order if it appears to the court to be appropriate to do so in view of the provisions of sections 15C and 15D that apply to the making of a witness anonymity order.
- (2) The court may do so—
  - (a) on an application made by a party to the proceedings if there has been a material change of circumstances since the relevant time; or
  - (b) on its own initiative
- (3) The court must give every party to the proceedings the opportunity to be heard—
  - (a) before determining an application made to it under subsection (2);
  - (b) before discharging or varying the order on its own initiative.
- (4) But subsection (3) does not prevent the court hearing 1 or more parties to the proceedings in the absence of an accused in the proceedings and the accused's legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.
- (5) In this section, "relevant time" means—
  - (a) the time when the order was made; or
  - (b) if a previous application has been made under subsection (2), the time when the application (or the last application) was made.

#### **15F. Discharge or variation of witness anonymity orders after proceedings**

- (1) This section applies if—
  - (a) a court has made a witness anonymity order in relation to a witness in criminal proceedings (the "old proceedings"); and
  - (b) the old proceedings have come to an end.
- (2) The court that made the order may discharge or vary (or further vary) the order if it appears to the court to be appropriate to do so in view of—
  - (a) the provisions of sections 15C and 15D that apply to the making of a witness anonymity order; and
  - (b) such other matters as the court considers relevant.
- (3) The court may do so—

- (a) on an application made by a party to the old proceedings if there has been a material change of circumstances since the relevant time; or
  - (b) on an application made by the witness if there has been a material change of circumstances since the relevant time.
- (4) The court may not determine an application made to it under subsection (3) unless, in the case of each of the parties to the old proceedings and the witness,—
  - (a) it has given the person the opportunity to be heard; or
  - (b) it is satisfied that it is not reasonably practicable to communicate with the person.
- (5) But subsection (4) does not prevent the court hearing 1 or more of the persons mentioned in that subsection in the absence of an accused in the old proceedings and the accused's legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.
- (6) In this section, "relevant time" means—
  - (a) the time when the old proceedings came to an end; or
  - (b) if a previous application has been made under subsection (3), the time when the application (or the last application) was made.

**15G. Discharge or variation of witness anonymity orders by Senior Judges' Court**

- (1) This section applies if—
  - (a) a court has made a witness anonymity order in relation to a witness in criminal proceedings (the "trial proceedings"); and
  - (b) an accused in the trial proceedings—
    - (i) has been convicted;
    - (ii) has been found not guilty by reason of insanity; or
    - (iii) has been found to be insane and incapable of following the proceedings.
- (2) The Senior Judges' Court may in proceedings on or in connection with an appeal by the accused from the trial proceedings discharge or vary (or further vary) the order if it appears to the court to be appropriate to do so in view of—
  - (a) the provisions of sections 15C and 15D that apply to the making of a witness anonymity order; and
  - (b) such other matters as the court considers relevant.
- (3) The Senior Judges' Court may not discharge or vary the order unless in the case of each party to the trial proceedings—
  - (a) it has given the person the opportunity to be heard; or
  - (b) it is satisfied that it is not reasonably practicable to communicate with the person.
- (4) But subsection (3) does not prevent the Senior Judges' Court hearing 1 or more of the parties to the trial proceedings in the absence of a person who was an accused in the trial proceedings and the person's legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case."

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**Notes**

(a) Ordinance 5/05, amended by the Human Trafficking and Exploitation Ordinance 2009 (Ordinance 25/09).

## **EXPLANATORY NOTE**

**(This note does not form part of the Ordinance)**

1. This explanatory note relates to the Protection of Witnesses (Amendment) Ordinance 2013 (the “Ordinance”). It has been prepared by the Office of the Attorney-General and Legal Adviser in order to assist the reader of the Ordinance and should be read in conjunction with the Ordinance.
2. The Ordinance amends the Protection of Witnesses Ordinance 2005 (the “principal Ordinance”) by inserting a new Part 3A (Anonymity of Witnesses).
3. The court is given a new power in criminal proceedings to make a witness anonymity order for the purpose of ensuring that the identity of a witness is not disclosed (see new section 15A of the principal Ordinance). The court has a wide discretion as to how to protect the identity of a witness, and the measures ordered may vary from case to case.
4. Conditions A, B and C must be met before the court may make a witness anonymity order (see new section 15C of the principal Ordinance). Condition B requires that the effect of the order be consistent with the defendant receiving a fair trial. The making of the order must therefore be compliant with Article 6 ECHR.
5. There is no right to appeal against the making of or the failure to make a witness anonymity order. But where no order is made, a further application may be made under new section 15B of the principal Ordinance in the case, say, of a material change of circumstances. New sections 15E to 15G of the principal Ordinance provide for the discharge and variation of witness anonymity orders.
6. The Ordinance is based on provisions in Part 3 of the Coroners and Justice Act 2009 (UK).