

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *for* HOME AFFAIRS

VIDEO-RECORDED EVIDENCE IN CRIMINAL PROCEEDINGS

The States are asked to decide:

Whether, after consideration of the Policy Letter dated 15 May, 2017 entitled Video-Recorded Evidence in Criminal Proceedings of the Committee *for* Home Affairs, they are of the opinion:-

1. To approve the proposals to permit a court in the Bailiwick to direct that a video-recording of a witness's evidence may be admitted as that witness's evidence in chief during criminal proceedings for any offence, as set out in the Video-Recorded Evidence (Bailiwick of Guernsey) Ordinance, 2017;

The above Proposition has been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.

THE STATES OF DELIBERATION

of the

ISLAND OF GUERNSEY

COMMITTEE FOR HOME AFFAIRS

VIDEO-RECORDED EVIDENCE IN CRIMINAL PROCEEDINGS

The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

15th May, 2017

Dear Sir

1 Executive Summary

- 1.1 The Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013 permits a Bailiwick court to give a direction that a video-recording of a witness's evidence may be admitted as that witness's evidence in chief during criminal proceedings for specified sexual offences.
- 1.2 With the advice of the Law Officers of the Crown, the Committee *for* Home Affairs, following consultation with the Bailiff, Alderney and Sark, considers that it is in the public interest to introduce a framework as soon as possible which would permit a court to give such a direction during criminal proceedings for any offence. In deciding whether to give a direction, the court would be required to consider all relevant factors, including the age and vulnerability of the witness.
- 1.3 This policy letter therefore proposes the enactment of legislation under the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 which will give the courts power to give these directions, unless it is not in the interests of justice to do so.

2. Background

- 2.1 Section 40 of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013 provides that, in criminal proceedings for a relevant sexual offence, a court may give a direction that a video recording of an interview with a witness (other than the accused) can be admitted as the evidence in chief of that witness. The court cannot give such a direction if would not be in the interests of justice to admit the video recording. A witness whose evidence in chief is given by way of video recording must then be called for

cross-examination by live-link or any other means ordered by the court, unless the parties agree that it is not necessary.

- 2.2 Her Majesty's Procureur has written to the Committee for Home Affairs in the following terms:

"Since the introduction of sections 39-41 of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013, a court dealing with a relevant sexual offence may admit a video recording of a witness's evidence (e.g. when interviewed by Guernsey Police as part of their investigations) as their evidence in chief, removing the need for the witness to repeat what they have previously stated. This is considered to have improved the quality of evidence before the courts by allowing factfinders to see and hear the witness's evidence as it was originally reported. In addition, it is likely to have reduced the stress experienced by, and the amount of time required of, a person who would otherwise give the totality of their evidence from the witness box.

However, the court can only admit such video-recorded evidence during proceedings in relation to the "relevant offences" set out in the 2013 Law; there is no such power in relation to other offences. The advantages of being able to admit a video recording of a witness's evidence in relation to sexual offences have highlighted a lacuna which exists in relation to other offences. It is important that witnesses who are vulnerable (whether due to age or other characteristics) are afforded appropriate means to testify and are not discouraged or otherwise inhibited from giving evidence. I therefore propose that this power should be made available to courts dealing with any offence, unless it is not in the interests of justice to do so. This is essentially the same test as found in the 2013 Law, as well as the Live-Link Evidence (Guernsey) Ordinance, 2008 which is likely to be used in combination with the proposed new powers. In considering whether to give a direction, the court should be under a duty to consider all relevant factors including the age and vulnerability of the witness.

Section 85 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 provides that in relation to any criminal proceedings before any court of the Bailiwick, the States may by Ordinance make provision as appropriate in relation to the receipt of evidence and the disclosure of material in those proceedings. I would therefore propose that an Ordinance is made under this section."

- 2.3 The Committee for Home Affairs concurs with the view expressed by Her Majesty's Procureur.

3. Consultation

- 3.1 The Bailiff, Alderney and Sark have been consulted and do not object to this proposal.

4. Procedure

- 4.1 The Law Officers of the Crown consider it to be necessary and expedient in the public interest that an Ordinance is enacted as soon possible.

4.2 The Policy & Resources Committee was therefore requested to exercise its powers under Article 66A of the Reform (Guernsey) Law, 1948 to enact a suitable Ordinance entitled "The Video-Recorded Evidence (Bailiwick of Guernsey) Ordinance, 2017", which is laid before the States in accordance with the said Article 66A, the States having the power to annul the Ordinance.

5. **Propositions**

The proposition is supported unanimously by Members of the Committee *for* Home Affairs. The States are asked to decide whether they are of the opinion:-

1. To approve the proposals to permit a court in the Bailiwick to direct that a video-recording of a witness's evidence may be admitted as that witness's evidence in chief during criminal proceedings for any offence, as set out in the Video-Recorded Evidence (Bailiwick of Guernsey) Ordinance, 2017.

Yours faithfully

Deputy M. M. Lowe
President

Deputy R. H. Graham
Deputy M. P. Leadbeater
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Committee *for*
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The President
Policy & Resources Committee
Frossard House
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St Peter Port

18th May 2017

Dear Sir,

Preferred date for consideration by the States of Deliberation

In accordance with Rule 4(2) of the Rules of Procedures of the States of Deliberation and their Committees, the Committee *for* Home Affairs requests that the Video-Recorded Evidence in Criminal Proceedings Policy Letter and the Video-Recorded Evidence (Bailiwick of Guernsey) Ordinance, 2017 be considered at the States' meeting to be held on 21st June 2017.

The Policy Letter sets out that it is in the public interest to introduce a framework as soon as possible which would permit a court to give a direction that video-recording of a witness's evidence may be admitted as evidence in chief during criminal proceedings for any offence.

The Policy and Resources Committee will be aware that the Law Officers of the Crown considered it to be necessary and expedient in the public interest that an Ordinance was enacted as soon as possible. As a consequence the Policy and Resources Committee exercised its powers under Article 66A of the Reform (Guernsey) Law, 1948 and enacted the Ordinance on 16th May 2017 and it came into force the following day. For these reasons the Committee for Home Affairs considers it appropriate that the Policy Letter and Ordinance is considered by the States without delay.

Her Majesty's Procureur has confirmed that the Presiding Officer has given permission for the Policy Letter and Ordinance to appear in the same Billet.

Yours faithfully

Deputy Mary Lowe
President
Committee *for* Home Affairs