

ORDINANCE LAID BEFORE THE STATES

THE VIDEO-RECORDED EVIDENCE (BAILIWICK OF GUERNSEY) ORDINANCE, 2017

In pursuance of the provisions of the proviso to Article 66A(1) of The Reform (Guernsey) Law, 1948, as amended, "The Video-Recorded Evidence (Bailiwick of Guernsey) Ordinance, 2017", made by the Policy & Resources Committee on the 16th May, 2017, is laid before the States.

EXPLANATORY MEMORANDUM

The Ordinance, made under the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003, permits a court in the Bailiwick 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. 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. A court in the Bailiwick may already make such a direction in respect of a witness's evidence where the criminal proceedings are in respect of certain specified sexual offences; the Ordinance effectively extends this discretionary power to criminal proceedings in respect of any offence.

The Ordinance was made by the Policy & Resources Committee in exercise of its powers under Article 66A(1) of the Reform (Guernsey) Law, 1948, and shall be deemed to have come into force on the 18th May, 2017. Under the proviso to Article 66A(1) of the Reform (Guernsey) Law, 1948, the States of Deliberation have the power to annul the Ordinance.

The Video-Recorded Evidence (Bailiwick of Guernsey) Ordinance, 2017

ARRANGEMENT OF SECTIONS

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3. Interpretation.
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The Video-Recorded Evidence (Bailiwick of Guernsey) Ordinance, 2017

THE STATES POLICY & RESOURCES COMMITTEE, in exercise of the powers conferred on them by sections 85 and 93 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003^a, and in exercise of the powers conferred on the Committee by Article 66A(1) of the Reform (Guernsey) Law, 1948^b, and having regard to the Policy Letter of the Committee for Home Affairs^c, hereby orders:-

Recorded evidence in chief.

1. (1) Subject to subsections (2) and (3), in criminal proceedings in respect of an offence, a court may give a direction ("**a recorded evidence direction**") that a video recording of an interview with any specified witness, other than the accused, be admitted as the evidence in chief of that witness.

(2) When considering whether to give a recorded evidence direction, the court must consider all relevant factors, including but not limited to -

(a) whether the witness is a child or other vulnerable person, and

^a No. XXIII of 2003 (Ordres en Conseil Vol. XLIII(2), p. 617); as amended by Orders in Council No. XVI of 2009 and No. XV of 2011, and Ordinances No. XXXIII of 2003 (Recueil d'Ordonnances Tome XXIX, p. 406), No. XXIX of 2011 and No. XXXIX of 2015.

^b Ordres en Conseil Vol. XIII, p. 288, as amended by Ordinance No. IX of 2016; there are other amendments not relevant to this enactment.

^c Article ? of Billet d'État ? of 2017.

- (b) whether a recorded evidence direction has been made in accordance with the 2013 Law.

(3) A recorded evidence direction may not be given in respect of a video recording if -

- (a) the court is of the opinion, having regard to all the circumstances of the case, that in the interests of justice the recording should not be so admitted, or
- (b) the video recording relates to a "**relevant offence**" for the purposes of the 2013 Law.

(4) Where a recorded evidence direction provides for a recording to be admitted under this section, the court may nevertheless subsequently direct that it is not to be so admitted if -

- (a) it appears to the court that -
 - (i) the witness will not be available for cross-examination (whether conducted in the ordinary way or in accordance with any other order of the court including, but not limited to, a live-link evidence direction), and
 - (ii) the parties to the proceedings have not agreed that there is no need for the witness to be so available, or

- (b) any rules of court requiring disclosure of the circumstances in which the recording was made have not been complied with to the satisfaction of the court.
- (5) Where a recording is admitted under this section -
 - (a) the witness must be called by the party tendering it in evidence, unless -
 - (i) a live-link evidence direction has been given,
 - (ii) any other direction has been made by a court which provides for the witness's evidence on cross-examination to be given otherwise than by testimony in court, or
 - (iii) the parties to the proceedings have agreed that there is no need for the witness to be called, and
 - (b) the witness may not give evidence in chief otherwise than by means of the recording -
 - (i) as to any matter which, in the opinion of the court, has been dealt with adequately in the witness's recorded testimony, or

- (ii) without the permission of the court, as to any other matter which, in the opinion of the court, is dealt with in that testimony.

(6) The court may, in giving permission for the purposes of subsection (5)(b)(ii), give a live-link evidence direction or make such other order as it sees fit.

(7) Nothing in this section affects the admissibility of any video recording which would be admissible apart from this section.

(8) Where a recorded evidence direction provides for part only of a recording to be admitted under this section, references in subsections (5) and (6) to the witness' s recorded testimony are references to the part of the testimony which is to be so admitted.

Effect of recorded evidence direction.

2. (1) A witness whose evidence in chief is the subject of a recorded 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 criminal proceedings but whose evidence in chief was given pursuant to a recorded 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).

Interpretation.

3. (1) For the purposes of this Ordinance, unless the context requires otherwise -

"the 2013 Law" means the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013,

"accused" means a person accused of an offence,

"child" has the meaning given in the Children (Guernsey and Alderney) Law, 2008^d,

"criminal proceedings" is to be interpreted in accordance with section 86 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003, as adapted for clarification by subsection (2),

"enactment" includes a Law, an Ordinance and any subordinate legislation and includes any provision or portion of a Law, an Ordinance or any subordinate legislation,

"live-link evidence direction" means a direction given under section 1 of the Live-Link Evidence (Bailiwick of Guernsey) Ordinance, 2008^e,

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any

^d No. XIV of 2009; as amended by Ordinance No. XI of 2009, No. XLVIII of 2009, No. IX and No. XX of 2016.

^e No. XI of 2008 (Recueil d'Ordonnances Tome XXXIII, p. 53), as amended by Ordinance No. X of 2011.

statutory, customary or inherent power and having legislative effect, but does not include an Ordinance,

and other words and expressions which are defined in the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 have the same meaning as in that Law.

(2) For the avoidance of doubt -

- (a) any references in sections 85 and 86 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003, to "**proceedings**" include every stage in criminal proceedings, from their institution until and including any appeal, in which a witness may be called upon, and
- (b) any reference to a video recording includes a reference to a part of such a recording, and any order which can be made in respect of a video recording may be made in respect of a part of such a recording.

Citation and extent.

4. (1) This Ordinance may be cited as the Video-Recorded Evidence (Bailiwick of Guernsey) Ordinance, 2017.

(2) This Ordinance shall have effect throughout the Bailiwick of Guernsey.

Commencement.

5. This Ordinance shall come into force on the 18th May, 2017.