
ARRANGEMENT OF CLAUSES**PART I**

PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Application

PART II

ANONYMITY IN INVESTIGATIONS

4. Qualifying offences
5. Qualifying criminal investigations
6. Investigation anonymity order
7. Application for investigation anonymity order
8. Conditions for making an order
9. Appeal against refusal to make an order
10. Discharge of order

PART III

WITNESS ANONYMITY

11. Common law rules
12. Measures of witness anonymity order
13. Application for a witness anonymity order
14. Conditions for making witness anonymity order
15. Relevant considerations
16. Discharge or variation of order
17. Warning to jury about witness anonymity order
18. Privacy as to precise address of witness

PART IV

SPECIAL MEASURES

19. Witness eligible for protection on grounds of fear or distress about testifying
20. Special measures direction relating to eligible witness
21. Effect of special measures direction

22. Discharge or variation of special measures direction
23. Evidence by live link
24. Evidence in private
25. Video recorded evidence
26. Video recorded cross-examination or re-examination
27. Examination of witness through intermediary
28. Aids to communication
29. Status of evidence
30. Warning to jury on special measures direction
31. Direction prohibiting defendant from cross-examining particular witness
32. Defence representation for purposes of cross-examination
33. Warning to Jury on prohibition from cross-examining witness
34. Evidence from outside Grenada

SCHEDULE

- FORM 1 – Application for an Investigatory Anonymity Order
- FORM 2 – Notice of Appeal Against Refusal to make an investigation anonymity order
- FORM 3 – Application to discharge or vary Witness Anonymity Order
- FORM 4 – Application for Witness Anonymity Order
- FORM 5 – Witness Anonymity Order
- FORM 6 – Application to discharge or vary Witness Anonymity Order
- FORM 7 – Application for a Special Measures Direction
- FORM 8 – Application for direction prohibiting defendant from cross-examining particular witness
- FORM 9 – Application to use live link for a Witness out of state



GRENADA

ACT NO. 17 OF 2014

I assent,



CECILE E. F. LA GRENADE
Governor-General.

28th April, 2014.

AN ACT to provide for the protection of witnesses in
criminal proceedings.

[By Notice].

BE IT ENACTED by the Queen's Most Excellent Majesty,
by and with the advice and consent of the Senate and the
House of Representatives of Grenada, and by the authority of
the same as follows—

PART I**PRELIMINARY**

1. This Act may be cited as the—

PROTECTION OF WITNESSES ACT, 2014

Short title
and com-
mencement.

and shall come into operation on a day fixed by the Minister
by Notice published in the *Gazette*.

Interpretation.

2. In this Act, unless the context otherwise requires—

“defendant” in relation to any criminal proceedings, means any person charged with an offence to which the proceedings relate, whether or not convicted;

“court” means the Magistrates’ Court, the High Court or the Court of Appeal;

“eligible witness” means a witness eligible for assistance pursuant to section 19;

“firearms” has the meaning assigned to it in the Firearms Act Cap. 105;

“investigation anonymity order” means an order made pursuant to section 6;

“legal representative” means an attorney-at-law who is admitted to practice law in Grenada;

“live link” means a live television link or other arrangement whereby a witness, while absent from the courtroom or other place where the proceedings are being held, is able to see and hear a person there and to be seen and heard;

“Minister” means the Minister charged with responsibility for legal affairs;

“offensive weapon” has the meaning assigned to it under the Restriction of Offensive Weapons Act Cap. 288;

“special measures direction” means a direction pursuant to section 20;

“witness” in relation to any criminal proceedings, means any person called, or proposed to be called, to give evidence at the trial or hearing in question;

“witness anonymity order” means an order made by a court pursuant to section 14 that requires such specified measures to be taken in relation to a witness in criminal proceedings.

3. Where any provision of this Act is in conflict with any other law, or where the exercise of any power conferred by or pursuant to this Act would be inconsistent with the exercise of a power conferred by or under any other law, the provisions of this Act apply in so far as it so conflicts. Application.

PART II

ANONYMITY IN INVESTIGATIONS

4. For the purposes of this Part, a qualifying offence is an offence for which the penalty is a term of imprisonment of ten years or more. Qualifying offences.

5. For the purposes of this Part, a qualifying criminal investigation is a criminal investigation conducted by the Police with a view to ascertaining— Qualifying criminal investigations.

- (a) whether a person should be charged with a qualifying offence; or
- (b) whether a person charged with a qualifying offence is guilty of it.

Investigation
anonymity order.

6.—(1) A magistrate may grant an order, in relation to a specified person, prohibiting the disclosure of information—

- (a) that identifies the specified person as someone who is or was able or willing to assist a specified qualifying criminal investigation; or
- (b) that might enable the specified person to be identified as such a person.

(2) A person who discloses information in contravention of an investigation anonymity order commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for four years or to both.

(3) A person does not contravene an investigation anonymity order by the disclosure of such information regarding the person specified in the order, if the person disclosing the information does not know and has no reason to suspect that such an order was made in relation to the specified person in connection with the specified qualifying criminal investigation.

(4) A person does not contravene an investigation anonymity order by the disclosure of such information as regards the specified person as is described in subsection (1)(b), if the person disclosing the information does not know and has no reason to suspect that the information disclosed is information that might enable the specified person to be identified as a person of the sort described in subsection (1)(a) in relation to the specified qualifying criminal investigation.

(5) A person, who discloses information to which an investigation anonymity order relates, does not contravene the order if—

- (a) the disclosure is made to a person who is involved in the specified qualifying criminal investigation or in the prosecution of an offence to which the investigation relates; and
- (b) the disclosure is made for the purposes of the investigation or the prosecution of an offence to which the investigation relates.

(6) A person does not contravene an investigation anonymity order by a—

- (a) disclosure in pursuance of a requirement imposed by any law; or
- (b) disclosure made in pursuance of an order of a court.

(7) A person who discloses such information as regards another person as is described in subsection (1) may not rely on subsection (6) in a case where—

- (a) it might have been determined that the person was required or permitted to withhold the information, whether on grounds of public interest or on other grounds; and
- (b) the person disclosed the information without there having been a determination as to whether the person was required or permitted to withhold the information, and the disclosure for the purposes of seeking

such a determination is not a contravention of an investigation anonymity order.

(8) In this section “specified” means specified in the investigation anonymity order concerned.

Application for investigation anonymity order.

7.—(1) An application for an investigation anonymity order may be made in Form 1 set out in the Schedule to a magistrate by—

- (a) the Commissioner of Police; or
- (b) the Director of Public Prosecutions.

(2) An applicant for an investigation anonymity order shall not be required to give notice of the application to—

- (a) a person who is suspected of having committed or who is charged with an offence to which the qualifying criminal investigation relates; or
- (b) that person’s legal representative.

(3) An applicant for an investigation anonymity order shall, unless the magistrate directs otherwise, inform the magistrate of the identity of the person who would be specified in the order.

(4) A magistrate may determine the application without a hearing.

(5) If a magistrate determines an application for an investigation anonymity order without a hearing, the magistrate or someone designated by him or her shall notify the applicant of the determination.

8.—(1) A magistrate may make an investigation anonymity order if satisfied that there are reasonable grounds for believing that the conditions set out in subsection (2)(a), (b) and (c) and either (d) or (e) are met.

(2) The conditions referred to in subsection (1) are—

- (a) that a qualifying offence was committed;
- (b) that the person who would be specified in the order has reasonable grounds for fearing intimidation or harm if identified as a person who is or was able or willing to assist the criminal investigation;
- (c) that the person who would be specified in the order—
 - (i) is able to provide information that would assist the criminal investigation as it relates to the qualifying offence; and
 - (ii) is more likely than not, as a consequence of the making of the order, to provide such information;
- (d) that the person likely to have committed the qualifying offence is a person who was at least eighteen years of age at the time the offence was committed;
- (e) that the person likely to have committed the qualifying offence is likely to have been a member of a group falling within subsection (3) at the time the offence was committed.

(3) A group falls within this subsection if—

- (a) it is possible to identify the group from the criminal activities that its members appear to engage in; and
- (b) it appears that the majority of the persons in the group are at least eighteen years of age.

(4) If it is suspected that the qualifying offence was committed by two or more persons, it is sufficient for the purposes of subsection (1) that the magistrate is satisfied that there are reasonable grounds for believing that the conditions in subsection (2) are satisfied in relation to one person.

Appeal against refusal to make an order.

9.—(1) Where a magistrate refuses an application for an investigation anonymity order, the applicant may appeal to the High Court in Form 2 set out in the Schedule against that refusal.

(2) An applicant may not appeal under subsection (1) unless the applicant indicates that he or she will appeal the magistrate's refusal to grant an investigation anonymity order—

- (a) in the application for the said order; or
- (b) if there is a hearing of the application before the magistrate, at that hearing.

(3) If an applicant has indicated an intention to appeal a refusal, a magistrate who refuses an application for an investigation anonymity order shall make the order as requested by the applicant.

(4) An order made under subsection (3) has effect until the appeal is determined or otherwise disposed of.

(5) An appeal under this section must be filed within seven days.

(6) The High Court Judge to whom an appeal is made shall consider the application for an investigation anonymity order and section 7(3) to (5) applies accordingly to the determination of the application by the judge.

10.—(1) The magistrate may discharge an investigation anonymity order in Form 3 in the Schedule on an application by the person on whose behalf the order was made. Discharge of order.

(2) An application may not be made under subsection (2) unless there has been a material change of circumstances since the relevant time.

(3) Any person eligible to apply for the discharge of the order is entitled to be party to the proceedings on the application in addition to the applicant.

(4) If an application to discharge an investigation anonymity order is made by a person other than the person specified in the order, the magistrate may not determine the application unless—

- (a) the person specified in the order has had an opportunity to oppose the application; or
- (b) the magistrate is satisfied that it is not reasonably practicable to communicate with the person.

(5) A party to these proceedings may appeal to a High Court Judge against the magistrate's decision.

(6) If during the proceedings a party indicates an intention to appeal against a determination to discharge the investigation anonymity order, a magistrate who makes such a determination shall provide for the discharge of the order not to have effect until the appeal is determined or otherwise disposed of.

(7) In this section "the 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.

PART III

WITNESS ANONYMITY

Common law
rules.

11.—(1) The common law rules relating to the power of a court to make an order for securing that the identity of a witness in criminal proceedings is withheld from the defendant or, on a defendant's application, from other defendants, are abolished.

(2) Nothing in this part affects the common law rules as to the withholding of information on the grounds of public interest immunity.

12.—(1) In this Part a “witness anonymity order” is an order made by a court that requires such specified measures to be taken in relation to a witness in criminal proceedings as the court considers appropriate to ensure that the identity of a witness is not disclosed in or in connection with the proceedings in Form 4 set out in the Schedule.

Measures for
witness
anonymity
order.

(2) The measures which may be specified in a witness anonymity order include measures for securing that the name and other identifying details of the witness may be—

- (i) withheld; and
- (ii) removed from materials disclosed to any party to the proceedings;
 - (a) that the witness may use pseudonym;
 - (b) that the witness is not asked questions of any specified description that might lead to the identification of the witness;
 - (c) that the witness is screened to any specified extent; and
 - (d) that the witness’s voice is subjected to modulation to any specified extent.

(3) In this section “specified” means specified in the witness anonymity order concerned.

Application for
witness
anonymity
order.

13.—(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 in Form 4 set out in the Schedule by the Director of Public Prosecutions or the defendant.

(2) Where an application is made by the Director of Public Prosecutions, he or she shall, unless the court directs otherwise, inform the court of the identity of the witness but is not required to disclose in connection with the application—

- (a) the identity of the witness to any other party to the legal proceedings or his or her legal representatives;
- (b) any information that might enable the witness to be identified, to any other party to the proceedings or his or her legal representatives.

(3) Where an application is made by the defendant, he or she shall inform the court and the Director of Public Prosecutions of the identity of the witness but if there is more than one defendant, he or she is not required to disclose in connection with the application—

- (a) the identity of the witness; or
- (b) any information that might enable the witness to be identified, to any other defendant or his or her legal representatives.

(4) Where the Director of Public Prosecutions or the defendant proposes to make an application under this section in respect of a witness, any relevant material which is

disclosed by or on behalf of that party before the determination of the application may be disclosed in such a way as to prevent—

- (a) the identity of the witness; or
- (b) any information that might enable the witness to be identified, from being disclosed except as required by subsection (2)(a) or (3)(a).

(5) In this section “relevant material” means any document or other material which 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 in proceedings preliminary to them.

(6) Subject to subsection (7), the court shall give every party to the proceedings the opportunity to be heard on an application under this section.

(7) Subsection (6) does not prevent the court from hearing one or more parties in the absence of a defendant and his or her legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.

14.—(1) Where an application is made for a witness anonymity order to be made in relation to a witness in criminal proceedings, the court may make such an order in Form 5 set out in the Schedule if it is satisfied that—

Conditions
for making
witness
anonymity
order.

- (a) the measures to be specified in the order are necessary in order to—
 - (i) protect the safety of the witness or another person or to prevent any serious damage to property; or

- (ii) 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;
- (b) having regard to all the circumstances, the taking of those measures specified in the order would be consistent with the defendant receiving a fair trial; and
- (c) it is necessary to make the order in the interests of justice by reason of the fact that it appears to the court that—
 - (i) it is important that the witness should testify; and
 - (ii) the witness would not testify if the order was not made.

(2) In determining whether the measures to be specified in the order are necessary for the purpose mentioned in sub-section (1)(a)(i), the court shall have regard in particular to any reasonable fear on the part of the witness—

- (a) that the witness or another person would suffer death or injury; or
- (b) that there would be serious damage to property, if the witness were to be identified.

15.—(1) When deciding whether the conditions specified under section 14(1) are met in the case of an application for a witness anonymity order, the court shall have regard to—

- (a) the considerations mentioned in sub-section (2); and
- (b) such other matters that the court considers relevant.

(2) The considerations referred to in sub-section (1)(a) are—

- (a) the general right of a defendant 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 his or her evidence comes to be assessed;
- (c) whether evidence given by the witness might be the sole or decisive evidence implicating the defendant;
- (d) whether the witness's evidence could be properly tested, whether on grounds of credibility or otherwise, without his or her identity being disclosed;
- (e) whether there is any reason to believe that the witness—
 - (i) has a tendency to be dishonest; and

-
- (ii) has any motive to be dishonest in the circumstances of the case, having regard, in particular, to any previous convictions of the witness and to any relationship between the witness and the defendant or any associates of the defendant;
 - (f) whether it would be reasonably practicable to protect the identity of the witness by any means other than by making a witness anonymity order specifying the measures that are under consideration by the court.

Discharge or variation of a witness anonymity order.

16.—(1) A court that has made a witness anonymity order in relation to any criminal proceedings may—

- (a) on an application in Form 6 set out in the Schedule 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, 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 section 14 and 15 that applied to the making of the order.

(2) In sub-section (1), “relevant time” means—

- (a) the time when the order was made; or
- (b) if a previous application was made under section 13, the time when the application (or the last application) was made.

17. Where, on a trial on indictment with a jury, any evidence has been given by a witness at a time when a witness anonymity order applied to the witness, the judge shall give the jury such warning as the judge considers appropriate to ensure that the fact that the order was made in relation to the witness does not prejudice the defendant.

Warning to jury about witness anonymity order.

18.—(1) In any proceeding, the precise particulars of an address of the witness, for example, details of the street and number, may not, without the permission of the court, be—

Privacy as to precise address of witness.

- (a) the subject of any question to a witness or included in any evidence given; or
- (b) included in any statement or remark made by a witness, legal representatives, officer of the court, or any other person.

(2) The court shall not grant permission pursuant to sub-section (1) unless satisfied that the question to be put, the evidence to be given, or the statement or remark to be made, is of sufficient direct relevance to the facts in issue that to exclude it would be contrary to the interests of justice.

(3) An application for permission pursuant to sub-section (1) may be made before or after the commencement of any hearing, and is, where practicable, to be made and dealt with in chambers.

(4) Nothing in sub-section (1) applies in a criminal proceeding if it is necessary to disclose the particulars in the charge in order to ensure that the defendant is fully and fairly informed of the charge.

(5) Subject to sub-section (1), where a witness anonymity order is made under this Act, any person who willfully discloses, or does something that is likely to disclose—

- (a) the identity of the witness;
- (b) the contact information or other identifying details of the witness,

commits an offence and is liable on summary conviction to imprisonment to a term of two years.

PART IV

SPECIAL MEASURES

Witness eligible for protection on grounds of fear or distress about testifying.

19.—(1) For the purposes of this Act a witness in criminal proceedings, other than the defendant, is eligible for protection under this part 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.

(2) In determining whether a witness falls within sub-section (1) the court must take into account—

- (a) the nature and alleged circumstances of the offence to which the proceedings relate;
- (b) the age of the witness;
- (c) any of the following matters which appear to the court to be relevant—

- (i) the social and cultural background and ethnic origin of the witness;
 - (ii) the domestic and employment circumstances of the witness; and
 - (iii) any religious beliefs or political opinions of the witness;
- (d) any behavior towards the witness on the part of—
- (i) the defendant;
 - (ii) members of the family or associates of the defendant; or
 - (iii) any other person who is likely to be a defendant or a witness in the proceedings.
- (e) any views expressed by the witness.

20.—(1) This section applies where in any criminal proceeding—

Special measures direction relating to eligible witness.

- (a) a party to the proceedings makes an application in Form 7 set out in the Schedule for the court to give direction under this section in relation to a witness in the proceedings other than the defendant; or
- (b) the court of its own motion raises the issue whether such a direction should be given.

(2) Where the court determines that the witness is eligible for protection under section 19, the court shall determine whether any of the special measures available under this part in relation to the witness, or any combination of them, would, in its opinion, be likely to improve the quality of evidence given by the witness and if so—

- (a) determine which of the measures, or combination of them, would, in its opinion, be likely to maximize so far as practicable the quality of such evidence; and
- (b) give a direction under the relevant section providing for the measure determined to apply to the evidence given by the witness.

(3) In determining for the purpose of this Act whether any special measure or measures would or would not be likely to maximize so far as practicable, the quality of evidence given by the witness, the court shall consider all the circumstances of the case, including—

- (a) any views expressed by the witness; and
- (b) whether the measure or measures might tend to inhibit such evidence being effectively tested by a party to the proceedings.

(4) A special measures direction must specify particulars of the provision made by the direction in respect of each special measure which is to apply the evidence of the witness.

(5) Nothing in this Part is to be regarded as affecting any power of a court to make an order to give leave of any description in the exercise of its inherent jurisdiction or otherwise in relation to—

- (a) a witness who is not an eligible witness; or
- (b) an eligible witness where, the order is made or the leave is given otherwise than by reason of the fact that the witness is an eligible witness.

21. Subject to section 15, a special measures direction has binding effect from the time it is made until the proceedings for the purposes of which it is made are either—

Effect of special measures direction.

- (a) determined by an acquittal, conviction or otherwise; or
- (b) abandoned,

in relation to the defendant or, if there is more than one, in relation to each of the defendants.

22.—(1) The court may discharge, vary or further vary a special measures direction if it appears to the court to be in the interests of justice to do so, and may do so either—

Discharge or variation of special measures direction.

- (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) of its own motion.

(2) In sub-section (1) “relevant time” means the time—

- (a) when the direction was given; or
- (b) at which a previous application was made.

(3) The court shall state in open court its reasons for—

- (a) giving or varying;
- (b) refusing an application for, or for the variation or discharge of; or
- (c) discharging.

(4) The Chief Justice may make rules of court for—

- (a) uncontested applications to be determined by the court without a hearing;
- (b) preventing the renewal of an unsuccessful application for a special measures direction except where there has been a material change of circumstances;
- (c) expert evidence to be given in connection with an application for, or for varying or discharging, such a direction;
- (d) the manner in which confidential or sensitive information is to be treated in connection with such an application and in particular as to it being disclosed to, or withheld from, a party to the proceedings.

23.—(1) A special measures direction may provide for the witness to give evidence by means of a live link. Evidence by live link.

(2) Where a direction provides for the witness to give evidence by means of a live link, the witness may not give evidence in any other way without the permission of the court.

(3) The court may give permission for the purposes of sub-section (2) if it appears to the court to be in the interests of justice to do so either—

- (a) on application by a party to the proceedings, if there has been a material change of circumstances since the relevant time; or
- (b) of its own motion.

(4) In sub-section (3) “relevant time” means the time—

- (a) when the direction was given; or
- (b) at which the previous application was made.

24.—(1) A special measures direction may provide for the exclusion from the court, during the giving of the evidence of a witness, of persons of any description specified in the direction. Evidence in private.

(2) The persons who may be so excluded do not include—

- (a) the defendant;
- (b) legal representatives acting in the proceedings; or

-
- (c) any interpreter or other person appointed, in pursuance of the direction or otherwise, to assist the witness.

Video recorded
evidence.

25.—(1) A special measures direction may provide for a video recording of an interview of the witness to be admitted as evidence in chief.

(2) Notwithstanding sub-section (1), a special measures direction shall not provide for a video recording or a part of a recording 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 admitted.

(3) In considering for the purposes of sub-section (2) whether any part of a recording should not be admitted under this section, the court must consider whether any prejudice to the defendant which might result from that part being so admitted is outweighed by the desirability of showing the whole, or substantially the whole, of the recorded interview.

(4) Where a special measures direction provides for a recording to be admitted under this section, the court may subsequently direct that it is not to be 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 direction; and
 - (ii) the parties to the proceedings have 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 special measures direction provides for the evidence of the witness on cross-examination to be given otherwise than by testimony in court; or
 - (ii) the parties to the proceedings have agreed as mentioned in sub-section (4)(a)(ii); and
- (b) the witness shall 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 recorded testimony of the witness; 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) Where in accordance with sub-section (2) a special measures direction provides for only part of a recording to be

admitted under this section, references in sub-sections (4) and (5) to the recording or to the recorded testimony of the witness are references to the part of the recording or testimony which is to be so admitted.

(7) The court may give permission for the purposes of sub-section (5)(b)(ii) if it appears to the court to be in the interests of justice to do so, and may do so either—

- (a) on an application by a party to the proceedings, if there has been a material change of circumstances since the relevant time; or
- (b) of its own motion.

(8) The court may, in giving permission for the purposes of sub-section (5)(b)(ii), direct that the evidence given by the witness be by means of a live link.

(9) In sub-section (7) “relevant time” means the time—

- (a) when the direction was given; or
- (b) if a previous application has been made, the time when the application (or last application) was made.

Video recorded
cross-examina-
tion or re-exam-
ination.

26. Where a special measures direction provides for a video recording to be admitted under section 25 as evidence in chief of the witness, the direction may provide for—

- (a) any cross-examination for the witness, and any re-examination, to be recorded by means of a video recording; and

-
- (b) such a recording to be admitted, so far as it relates to any such cross-examination or re-examination, as evidence of the witness under cross-examination or on re-examination, as the case may be.

27.—(1) A special measures direction may provide for any examination of the witness, however and wherever conducted, to be conducted through an intermediary or other person approved by the court for the purposes of this section. Examination of witness through intermediary.

(2) The function of an intermediary is to—

- (a) communicate—
- (i) to the witness, questions put to the witness; and
 - (ii) to any person asking the questions, the answers given by the witness in reply to such questions; and
- (b) explain such questions or answers so far as necessary to enable them to be understood by the witness or person in question.

(3) An examination of the witness under sub-section (1) must take place in the presence of persons that rules of court or the direction may provide, but in circumstances in which—

- (a) the magistrate or judge and legal representatives acting in the proceedings are able to see and hear the examination of the witness and to communicate with the intermediary; and

- (b) except in the case of a video recorded examination, the jury, if there is one, are able to see and hear the examination of the witness.

(4) Where two or more legal representatives are acting for a party to the proceedings, sub-section (3)(a) is to be regarded as satisfied in relation to those representatives if at all material times it is satisfied in relation to at least one of them.

(5) A person shall not act as an intermediary in a particular case except after making a declaration, in the form prescribed by rules of court, that he or she will faithfully perform his or her function as intermediary.

(6) Sub-section (1) does not apply to an interview of the witness which is recorded by means of a video recording with a view to its admission as evidence in chief of the witness; but a special measures direction may provide for such a recording to be admitted if the interview was conducted through an intermediary and—

- (a) that person complied with sub-section (5) before the interview began; and
- (b) the court's approval for the purposes of this section is given before the direction is given.

(7) In this section "intermediary" means an interpreter or other person.

Aids to
communication.

28. A special measures direction may provide for the witness, while giving evidence, whether by testimony in court

or otherwise, to be provided with such device as the court considers appropriate with a view of enabling questions or answers to be communicated to or by the witness despite any disability or disorder or other impairment which the witness has or suffers from.

29.—(1) Sub-sections (2) to (4) apply to a statement made by a witness in proceedings under this Act which, in accordance with a special measures direction, is not made by the witness in direct oral testimony in court but forms part of the evidence of the witness in the proceedings. Status of evidence.

(2) The statement must be treated as if made by the witness in direct oral testimony in the court and the statement is—

- (a) admissible evidence of any fact of which such testimony from the witness would be admissible;
- (b) not capable of corroborating any other evidence given by the witness.

(3) Sub-section (2) applies to a statement admitted under section 18 of which is not made by the witness on oath even though it would have been required to be made on oath if made by the witness in direct oral testimony in court.

(4) In estimating the weight, if any, to be attached to the statement, the court must have regard to all the circumstances from which an inference can reasonably be drawn, as to the accuracy of the statement or otherwise.

(5) In this section “statement” includes any representation of fact, whether made in words or otherwise.

Warning to jury on special measures direction.

30. Where on a trial evidence has been given in accordance with a special measures direction, the judge shall give the jury such warning, if any, as the judge considers necessary to ensure that the fact that the direction was given in relation to the witness does not prejudice the defendant.

Direction prohibiting defendant from cross-examining particular witness.

31.—(1) The Director of Public Prosecutions may make an application in Form 8 set out in the Schedule for the court to give a direction under this section in relation to a witness.

(2) The court may of its own motion raise the issue whether such a direction should be given.

(3) If it appears to the court—

- (a) that the quality of evidence given by a witness on cross-examination—
 - (i) is likely to be diminished if the cross-examination, or further cross-examination is conducted by the defendant in person; and
 - (ii) would be likely to be improved if a direction were given under this section; and
- (b) that it would not be contrary to the interests of justice to give such a direction,

the court may give a direction prohibiting the defendant from cross-examining, or further cross-examining the witness in person.

(4) In determining whether sub-section (3)(a) applies in the case of a witness the court shall have regard to—

- (a) any views expressed by the witness as to whether or not the witness is content to be cross-examined by the defendant in person;
- (b) the nature of the questions likely to be asked, having regard to the issues in the proceedings and the defence case advanced so far, if any;
- (c) any behavior on the part of the defendant at any stage of the proceedings, both generally and in relation to the witness;
- (d) any relationship, of whatever nature, between the witness and the defendant.

(5) A direction under this section has binding effect from the time it is made until the witness to whom the direction applies is discharged.

(6) The court may discharge a direction if it appears to the court to be in the interests of justice to do so, and may do so either—

- (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) of its own motion.

(7) In sub-section (6) “relevant time” means the time—

- (a) when the direction was given; or
- (b) at which a previous application was made under that sub-section, the time when the application (or last application), was made.

(8) The court shall state in open court its reasons for—

- (a) granting an application;
- (b) refusing an application for, or the discharge of an application; or
- (c) discharging an application.

(9) The Chief Justice may make rules of court of—

- (a) uncontested applications to be determined by the court without a hearing;
- (b) preventing the renewal of an unsuccessful application for a direction except where there has been a material change of circumstances;
- (c) expert evidence to be given in connection with an application for, or for discharging, a direction;
- (d) the manner in which confidential or sensitive information is to be treated in connection with such an application and in particular as to it being disclosed to, or withheld from, a party to the proceedings.

Defence
representation
for purposes of
cross-examina-
tion.

32.—(1) This section applies where a defendant is prevented from cross-examining a witness in person under section 31.

(2) Where it appears to the court that this section applies, it shall—

- (a) invite the defendant to arrange for a legal representative to act for him or her for the

purposes of cross-examining the witness;
and

- (b) invite the defendant to notify the court, by the end of such period as it may specify, whether a legal representative is acting for him or her for that purpose.

(3) If by the end of the period mentioned under sub-section (2)(b) either—

- (a) the defendant has notified the court that no legal representative is acting for him or her for the purpose of cross-examining the witness; or
- (b) no notification has been received by the court and it appears to the court that no legal representative is so instructed to act,

the court must consider that it is necessary in the interests of justice for the witness to be cross-examined by a legal representative appointed to represent the interests of the defendant.

(4) If the court determines that it is necessary in the interests of justice for the witness to be cross-examined by a legal representative appointed to represent the interests of the defendant.

(5) The Chief Justice may make rules of court—

- (a) to determine when, and the manner in which, sub-section (2) is to be complied with;
- (b) for the appointment of a legal representative under sub-section (4), and in particular for securing that person so appointed

is provided with evidence or other material relating to the proceedings.

Warning to jury on prohibition from cross-examining witness.

33. Where on a trial, a defendant is prevented from cross-examining a witness in person under section 31, the judge if he or she considers it necessary must give such directions to the jury to ensure that the defendant is not prejudiced—

- (a) by any inferences that might be drawn from the fact that the defendant was prevented from cross-examining the witness in person;
- (b) where the witness was cross-examined by a legal representative appointed under section 32(4), by fact that the cross-examination was carried out by such a legal representative.

Evidence from outside Grenada.

34.—(1) The court may permit evidence to be given by means of technology, such as the live link in Form 9 set out in the Schedule that permits the virtual presence of the witness before the court and that permits the court and the parties to the proceedings to hear, examine and cross-examine the witness, if the witness is outside Grenada.

(2) Evidence given under sub-section (1) shall be given as though the witness was physically before the court and the law relating to contempt of court with respect to a refusal by the witness to answer a question or to produce a document applies to such evidence.

(3) Where on trial, evidence has been given in accordance with sub-section (1), the judge shall give the jury a warning, if any, that the judge considers necessary to ensure that the fact that the evidence was given by means of technology, such as live link, does not prejudice the defendant.

(2) There are reasonable grounds for believing that the following conditions are met.

(a) That the following qualifying offence has been committed:

(b) That the person who would be specified in the order has reasonable grounds for—

fearing intimidation or harm if identified as a person who is or was able or willing to assist the criminal investigation as it relates to the qualifying offence – PLEASE DETAIL

(c) That the person who would be specified in the order—

is able to provide information that would assist the criminal investigation as it relates to the qualifying offence – PLEASE DETAIL; and

is more likely than not, as a consequence of the making of the order, to provide such information;

(d) That the person likely to have committed the qualifying offence is –

a person who was at least sixteen years of age at the time the offence was committed;

(e) That the person likely to have committed the qualifying offence is likely to have been –

a member of a group falling within section 8 (3) at the time the offence was committed; or

the qualifying offence was committed by two or more persons

An investigation anonymity order is applied for.

[Signed]
Applicant.

FORM 3

(Section 10(1))

APPLICATION TO DISCHARGE INVESTIGATION ANONYMITY ORDER

IN THE

[NAME OF COURT]

[name]
Applicant.

V

[name]
Defendant.

Application is made that a material change of circumstances [since the time when the Investigation Anonymity Order was made] or [if a previous application had been made, the time when the application was made or the last application was made].

STATE PARTICULARS OF MATERIAL CHANGE:

A discharge of the Investigation Anonymity Order is applied for.

[Signed]
Applicant.

FORM 4

(Section 13(1))

APPLICATION FOR WITNESS ANONYMITY ORDER

IN THE

[NAME OF COURT]

[name]
Applicant.

V

[name]
Defendant.

Application is made that a witness anonymity order is necessary for the measures below (check boxes as appropriate) to be used—

- Name and other identifying details of the witness are withheld and removed from materials disclosed to any party to the proceedings
- Witness use a pseudonym
- Witness is not asked questions of (specify description of questions) that might lead to the identification of the witness
- Witness is screened to (specify extent)
- Voice of the witness is subject to modulation to (specify extent)

in order to protect the safety of the witness (name of witness) or (name of another person) or to prevent any serious damage to property or 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;

and

having regard to all the circumstances, the taking of the measures above would be consistent with the defendant receiving a fair trial;

and

it is necessary to make the order in the interests of justice by reason of the fact that it appears to the court that it is important that the witness should testify and the witness would not testify if the order was not made.

A witness anonymity order is applied for.

[Signed]
Applicant.

FORM 5

(Section 14(1))

WITNESS ANONYMITY ORDERIN THE
[NAME OF COURT][name]
Applicant.

V

[name]
Defendant.

Whereas I am satisfied by an application of [name of prosecutor or defendant], that in order to protect the safety of the witness [name of witness] or [name of another person] or to prevent any serious damage to property or 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;

and

having regard to all the circumstances, the taking of the measures below would be consistent with the defendant receiving a fair trial;

and

it is necessary to make the order in the interests of justice by reason of the fact that it appears to the court that it is important that the witness should testify and the witness would not testify if the order was not made.

It is hereby ordered that the measures below (check boxes as appropriate) are used—

- Name and other identifying details of the witness are withheld and removed from materials disclosed to any party to the proceedings
- Witness use a pseudonym

FORM 7

(Section 20(1)(a))

APPLICATION FOR A SPECIAL MEASURES DIRECTION

IN THE

[NAME OF COURT]

[name]
Applicant.

V

[name]
Defendant.

Application is made that the witness [name of witness and date of birth] is eligible for assistance because of fear or distress, [give details and explain why the quality of the evidence for the witness is likely to be diminished because of that].

Explain why special measures would be likely to improve the quality of the evidence of the witness.

Which measure(s) would be likely to maximize so far as practicable the quality of the evidence of the witness? (check boxes as appropriate)

- | | |
|--|--------------------------|
| Evidence by live link | <input type="checkbox"/> |
| Evidence in private | <input type="checkbox"/> |
| Video recorded evidence | <input type="checkbox"/> |
| Video recorded cross-examination or re-examination | <input type="checkbox"/> |
| Intermediary | <input type="checkbox"/> |
| Aids to communication | <input type="checkbox"/> |

Evidence by live link (complete if special measures direction is for evidence by live link)

Do you want the witness to give evidence:

- | | |
|----------------------------------|--------------------------|
| Using the court's own live link? | <input type="checkbox"/> |
| From somewhere else? | <input type="checkbox"/> |

Tick which you propose.

Explain why you want the witness to give evidence from somewhere else. Give the address from which you propose the witness should give evidence, unless you want the court to direct that the address need not be revealed.

Who do you propose should accompany the witness while he or she gives evidence? Give that person's name, if known, and relationship to the witness (if any).

Why would that person be an appropriate companion for the witness? [Include the witness' own views].

Evidence in private (complete if special measures direction is for evidence in private).

Explain on what grounds you want the witness to give evidence in private.

Video recorded interview as evidence in chief (complete if special measures direction is for video recorded interview as evidence in chief).

When was the interview? (date)

Was the interview conducted through an intermediary?

No Yes If yes, complete

Was any aid to communication used in conducting the interview?

No Yes If yes, give details.

How long is the full version of the recording?
(hours/minutes)

Has an edited version been prepared for use in evidence?

No Yes

When did you serve:

(a) the full version? (date)

(b) the edited version (if any)? (date)

Do you want the court's permission for the witness to give evidence in chief otherwise than by means of the recording?

- No Yes If yes, explain why.

Intermediary (complete if special measures direction is for intermediary).

Describe the witness' communication needs, and the proposed arrangements for questioning the witness. Attach any relevant report, including an intermediary's assessment if available. 'Ground rules' for questioning must be discussed between the court, the advocates and the intermediary before the witness gives evidence, to establish (a) how questions should be put to help the witness understand them, and (b) how the proposed intermediary will alert the court if the witness has not understood, or needs a break.

Give the proposed intermediary's (a) name and (b) (if relevant) occupation, skills and professional qualifications.

Is the intermediary known, or related, to the witness?

- No Yes If yes, give details.

Has the intermediary been used in any other part of the investigation or pre-trial preparation?

- No Yes If yes, give details.

Where a video recorded interview was conducted through an intermediary:

- (a) was that intermediary the person named above? Yes No
(b) did that intermediary make a declaration? Yes No

Aids to communication (complete if special measures direction is for aids to communication)

What device is proposed as a communication aid?

Might the use of this device affect the conduct of the trial?

No Yes If yes, give details.
A special measures direction is applied for.

Dated this day of , 2014.

[Signed]
*Prosecutor or defendant/
Attendant's [attorney-at-law].*

FORM 8

(Section 31(1))

APPLICATION FOR DIRECTION PROHIBITING ACCUSED FROM
CROSS-EXAMINING PARTICULAR WITNESS

IN THE

[NAME OF COURT]

[name]
Applicant.

V

[name]
Accused.

Application is made that the quality of evidence given by the witness [name of witness] on cross-examination is likely to be diminished if cross-examination, or further cross-examination is conducted by the accused in person and would be likely to be improved if a direction were given and that it would not be contrary to the interests of justice to give the direction.

A direction prohibiting the accused from cross-examining the witness [name of witness] is applied for.

[Signed]
Applicant.

FORM 9

(Section 34(1))

APPLICATION TO USE LIVE LINK FOR A WITNESS OUT OF STATE

Section 34

IN THE

[NAME OF COURT]

[name]
Applicant.

V

[name]
Accused.

Application is made that the witness [name of witness and date of birth] is eligible to give evidence via the live link because they are out of State, [give details and explain why out of State].

Explain why you think it is expedient for the witness to give evidence via the live link rather than giving evidence in State.

Give the address from which you propose the witness should give evidence, unless you want the court to direct that the address need not be revealed.

[Signed]
*DPP or accused/
Defendant's [attorney-at-law].*

Passed by the House of Representatives this 6th day of March, 2014.

ADRIAN FRANCIS
Acting Clerk to the House of Representatives.

Passed by the Senate this 4th day of April, 2014.

RAPHAEL DONALD
Acting Clerk to the Senate.

GRENADA
