

**For information
on 27 June 2016**

**Legislative Council
Panel on Administration of Justice and Legal Services**

**Practice Directions relating to the Provision of Screens for Witnesses
in Sexual Offence Cases during Court Proceedings**

PURPOSE

This paper informs Members of the latest position of the Practice Directions issued by the Judiciary to enhance the application procedures for the provision of protective screens for witnesses in sexual offence cases during court proceedings.

BACKGROUND

Provision of Protective Screens

2. Whilst there is currently no legislative provision specifically governing the use of screens for witnesses in sexual offence proceedings, the use of screens in criminal proceedings is governed by common law. Whether a screen should be deployed during court proceedings is a matter subject to judicial discretion.

3. Under the existing arrangements, the prosecution may apply to the court before trial for special measures to be adopted to address the specific needs of the witnesses testifying in court. Such measures may include placing a screen around the witness in a sexual offence case during related proceedings so that :

- (a) the witness will not be able to see the accused; and/or
- (b) the public and the press will not be able to view the witness.

4. The court would consider the prosecution's application carefully having regard to the circumstances of the case and the needs of the witnesses and would take into account the views of the defendant before

deciding whether to adopt any special measure. The discretion is exercised as part of the court's common law duty to endeavour to see that justice is done and is seen to be done in the case.

Earlier Discussions

5. At the Panel meeting on 26 January 2015, Members discussed the following three options proposed by the Judiciary to provide screens for sexual offence witnesses :

- (a) whether the law should be changed to provide for automatic provision of screens for witnesses in sexual offence cases upon the prosecution's application;
- (b) whether, within the existing framework, the current procedures could be improved for considering applications for use of screens for witnesses in sexual offence cases by amending the relevant Practice Directions; and
- (c) whether, within the existing framework, certain guidelines should be developed to set out in greater details the factors that should be taken into account when the court considered applications for use of screens for witnesses in sexual offence cases.

6. Members noted that option (a) above is a matter for the Government, while option (b) above for the Judiciary. Members considered that option (b) should be adopted first, whilst option (a) should continue to be pursued.

7. This paper seeks to update Members on the latest position about option (b) above. The Judiciary understands that the Government is separately issuing another paper on option (a) above for the same Panel meeting.

PRACTICE DIRECTIONS

Consultation

8. Given that the application for use of screen is initiated by the prosecution, the Judiciary considers that the procedure can be improved by

amending or introducing the relevant Practice Directions¹ to require, as a matter of standing procedure, the counsel concerned to submit any request for using a screen and the other relevant information to the presiding judge for every sexual offence case.

9. In late 2015, the Judiciary consulted the stakeholders on the proposed amended and new Practice Directions. The stakeholders include the Hong Kong Bar Association, the Law Society of Hong Kong, the relevant Government Bureaux and Departments as well as the relevant Non-Governmental Organizations².

10. The responding stakeholders have indicated general support for the Practice Directions. Some of them have comments. After taking into account their comments carefully, the Judiciary issued the Practice Directions requiring the Secretary for Justice to generally furnish the defendant with the following information not later than 10 days before the pre-trial review (if a pre-trial review has been ordered) or 21 days before the commencement of the trial (if no pre-trial review has been ordered) :

- (a) whether a witness has requested the use of a screen in giving evidence and, if so, the type of the screen requested (e.g. whether hiding from the accused, the public or both); and
- (b) irrespective of whether the witness has made a request for the use of a screen, whether the prosecution considers it appropriate to make such an application and the grounds for such consideration. If an application is made, the prosecution should also indicate the type of the screen requested (e.g. whether hiding from the accused, the public or both).

11. The defendant will then be required to inform the Secretary of Justice whether they have any objection to the proposed use of a screen, with justifications, within 7 days from the receipt of the above information.

¹ For the Court of First Instance and the District Court, this is achieved by amending the existing Practice Directions. They are Practice Direction 9.3 “Criminal Proceedings in the Court of First Instance” and Practice Direction 9.4 “Criminal Proceedings in the District Court”.

For the Magistrates’ Courts, this is achieved by issuing a new Practice Direction.

² They are the Hong Kong Committee on Children’s Rights, the Against Child Abuse, the Association Concerning Sexual Violence Against Women, Rainlily and OIWA Limited.

12. The trial Judge will consider the arguments of both sides to decide whether any proposed use of a screen should be allowed.

13. Some responding organizations have also suggested that besides screens, a special passageway should also be included at the same time for the witness to enter and leave the courtroom. The court has been trying to provide for special passage ways within the constraints of the relevant court buildings if such a passage way is considered necessary by the Judge concerned having regard to such factors as the needs of the witness and circumstances of the case. Given the physical constraints of individual court buildings (particularly the older ones), turning this into a standing arrangement may not always be operationally possible. The proposal therefore requires further careful consideration. The Judiciary will tackle this separately.

Issuance of Practice Directions

14. The Judiciary issued the new and amended Practice Directions on 14 June 2016. When these Practice Directions come into effect³, the consideration of the need for screen will become a standing procedure in every sexual offence case that is brought before the court. The introduction of this measure ensures that consideration has been given by the complainant and the prosecution to the use of a screen in each and every sexual offence case.

15. The Judiciary will closely monitor the actual operation of the new arrangements to see if there is any further room for improvement.

ACTION REQUIRED

16. Members are invited to note the contents of this paper.

Judiciary Administration
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³ The Practice Directions will take effect on 1 August 2016, to allow time for the relevant parties to make preparation for the changes.